LOCAL RULES OF
THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF TENNESSEE

Effective: March 1, 1994

As Amended through September 9, 2005

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JUDICIAL DIVISIONS OF THE EASTERN DISTRICT OF TENNESSEE

NORTHEASTERN DIVISION (GREENEVILLE, TENN.)

Counties: Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi, and Washington.

Office of the Clerk: U.S. Courthouse, 220 West Depot Street, Greeneville, Tennessee 37743.

NORTHERN DIVISION (KNOXVILLE, TENN.)

Counties: Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier, and Union.

Office of the Clerk: U.S. Courthouse, 800 Market Street, Suite 130, Knoxville, Tennessee 37902.

SOUTHERN DIVISION (CHATTANOOGA, TENN.)

Counties: Bledsoe, Bradley, Hamilton, McMinn, Marion, Meigs, Polk, Rhea and Sequatchie.

Office of the Clerk: U.S. Courthouse, 900 Georgia Avenue, Chattanooga, Tennessee 37402.

WINCHESTER DIVISION (WINCHESTER, TENN.)

Counties: Bedford, Coffee, Franklin, Grundy, Lincoln, Moore, Van Buren, and Warren.

Office of the Clerk: U.S. Courthouse, South Jefferson Street, Winchester, Tennessee 37398

I. SCOPE OF THE RULES – ONE FORM OF ACTION

LR1.1 Scope of the Rules

(a) Title and Citation. These rules shall be known as the Local Rules of the United States District for the Eastern District of Tennessee. They may be cited as "E.D.TN. LR__."[1]

(b) Effective Date; Transitional Provision. These rules become effective on March 1, 1994, and shall govern all actions and proceedings pending on or commenced after they take effect, except to the extent, in the opinion of the judge to whom the case is assigned, their application in an action or proceeding pending on that date would not be feasible or would work an injustice.

(c) Scope of Rules; Construction. These rules supersede all previous rules promulgated by this court or any judge of this court and supplement the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure and the Civil Justice Reform Act plan for the Eastern District of Tennessee, and shall be construed so as to be consistent with those rules and to promote the just, efficient, and economical determination of every action and proceeding. United States Code, Title 1, sections 1 to 5 shall, as far as applicable, govern the construction of these rules.

(d) Reference to Clerk. The term "clerk" as used herein refers to the Clerk of the Court, unless specifically stated otherwise.

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[1]These rules are numbered to conform with the Uniform Numbering System for Local Rules approved by the United States Judicial Conference. In some instances, there are no local rules that pertain to the Uniform Numbering System and those numbers have been omitted.

LR1.2 Amendments to the Local Rules

When amendments to these rules are made, notice of the amendments shall be provided on the public bulletin board in each divisional office of the clerk for a reasonable period of time.

II. COMMENCEMENT OF THE ACTION

LR3.1 Civil Cover Sheet

Every complaint or other document initiating a civil action shall be accompanied by a completed civil cover sheet, on a form (JS-44) available from the clerk. This requirement is solely for administrative purposes, and matters appearing only on the civil cover sheet have no legal effect in the action. If any related case has previously been filed, counsel shall call it to the court's attention in the "Remarks" portion of the civil cover sheet.

Persons filing civil cases *pro se* are exempt from this requirement.

LR3.2 Assignment of Cases to Judges

(a) Method. Each case, upon filing, shall be assigned to a district judge and magistrate judge, who shall continue in the case or matter until its final disposition, except as hereinafter provided. Magistrate judges will not be assigned bankruptcy appeals.

(b) Sequence. All initial papers in cases shall be first filed in the office of the Clerk who shall stamp on the complaint, petition, or other initial paper of each case so filed, the number of the case and the names of the district judge and magistrate judge to whom it is assigned. The numbering and assignment of each case shall be completed before processing of the next case is commenced.

(c) Procedure. The Clerk shall use automated or manual means to assign new cases to district judges at random in accordance with administrative orders issued by the Court from time to time. The Clerk shall mark the name of the assigned district judge on the first document of the case and preserve a record of such assignments.

(d) Exceptions.

(1) Refilings. If a case is dismissed or remanded to state court and later refiled, either in the same or similar form, upon refiling it shall be assigned or transferred to the district judge to whom it was originally assigned.

(2) Subsequent proceedings. Subsequent proceedings in cases (including petitions under 28 U.S.C. §2255) shall be assigned to the district judge assigned to the original case, if that judge is still hearing cases.

(3) Related cases. Cases related to cases already assigned to a district judge shall be assigned or transferred as set out below.

A. Definition. Cases are deemed related when a filed case (1) relates to property involved in an earlier numbered case, or (2) arises out of the same transaction or occurrence and involves one or more of the same parties as an earlier numbered case, or (3) involves the validity or infringement of a patent already at issue in any earlier numbered case.

B. Determination. When it appears to the Clerk that a case submitted for filing may be related to a previously filed case, the submitted case shall be referred to the magistrate judge assigned to the previously filed case to determine whether or not the cases are related. If the magistrate determines the cases are related, the magistrate will enter an order directing the Clerk to assign the submitted case to the judge assigned to the previously filed case. If cases are found to be related cases after assignment to different judges, they may be reassigned by the Chief Judge to the judge having the related case earliest filed.

(e) Effect. This rule is intended to provide for an orderly division of the business of the Court and not to grant any right to any litigant.

(f) Duty of parties. In accordance with LR 3.1, counsel shall set forth on the Civil Cover Sheet all pending related cases and any dismissed or remanded prior cases.

(g) Unavailability of judge. If it appears that any matter requires immediate attention, and the district judge to whom the case has been assigned, or in the usual course would be assigned, is not available, the matter shall be referred to the magistrate judge assigned to the case, who shall decide the matter if it is within the magistrate judge's jurisdiction. If the matter can only be decided by a district judge, the magistrate judge shall determine whether the matter can be set for a hearing at a time when the assigned district judge is available. If the matter is determined by a magistrate judge to require an immediate hearing before a judge, the case will be referred to the Chief Judge, or in the Chief Judge's absence, the next available district judge by seniority for decision or reassignment to an available judicial officer. After disposition of this emergency matter, the case will be returned to the originally assigned district judge.

LR3.3 Disclosure of Corporate Interests

(a) Certificate of Interest. Every non-governmental corporate party in a civil or criminal case must file a certificate of interest. Information provided in the certificate may be used by the judge assigned to a case for the sole purpose of determining whether recusal is necessary or appropriate. The certificate shall be filed with the party's first pleading or entry of appearance. The certificate of interest may be filed under seal if so ordered by the court in accordance with Local Rule 26.2.

(b) Content. The certificate of interest shall identify all parent corporations, subsidiaries not wholly owned, and any publicly held company that owns 10% or more of the party's stock. When a negative or not applicable response is required, the certificate shall so state.

(c) Changes and Updates. If a change in any of the items listed in Paragraph (b) of this rule occurs after the certificate is filed and before the time has expired for filing a notice of appeal from a final judgment in the case, an amended certificate shall be filed within seven days of the change.

NOTE: A Certificate of Interest form can be obtained by accessing the Courts web site at www.tned.uscourts.gov under the Court Forms link or from the Clerk's Office.

LR4.1 Service of Process

(a) Preparation of Summons. Any attorney filing a complaint or any other pleading that requires the issuance of a summons shall prepare and submit the summons to the clerk. Upon approval, the clerk shall issue the summons in accordance with Rules 4 and 4.1 of the Federal Rules of Civil Procedure.

(b) Preparation of Subpoenas for Witnesses. The United States Marshal will not serve subpoenas for witnesses in civil cases unless required to do so by these rules, the Federal Rules of Civil Procedure Rule 45, or by order of the court. When an attorney delivers subpoenas for witnesses in civil cases to another individual for service, he or she should do so in accordance with the Federal Rules of Civil Procedure, at least seven (7) days, excluding Saturdays, Sundays, and holidays, prior to trial, and should advance any funds that may be required. If the foregoing requirements have not been complied with, no motion for continuance for failure of a witness to appear shall be granted except upon a showing of extenuating circumstances.

In criminal cases, the United States Attorney shall endeavor to deliver subpoenas for witnesses to the United States Marshal ten (10) days prior to trial.

LR4.2 Payment of Fees by *In Forma Pauperis* Litigants

Depending on the amount of funds available to the petitioner, the court may require the petitioner to pay a portion of the filing fee.

LR4.4 Prepayment of Fees

The clerk shall require advance payment of fees before any civil action, suit or proceeding (other than those authorized to be brought *in forma pauperis*) is filed. Once a filing fee has been paid, it may not be returned to counsel for any party, or to any unrepresented party, except by order of the court.

LR4.5 When Fee Not Included

When a pleading is received for filing and is unaccompanied by either the required filing fee or an application to proceed *in forma pauperis*, the clerk shall note "received" and the date received on the pleading and immediately notify counsel or the party who submitted the pleading that the pleading is held but not filed pending receipt of the required filing fee or a completed application to proceed *in forma pauperis*. When a pleading is received for filing and is accompanied by an application to proceed *in forma pauperis*, the clerk shall note "received" and the date received on the pleading and submit the application to the judge next designated in the court's current rotation schedule.

LR5.1 General Format of Papers Presented for Filing

All pleadings, motions, and other papers presented for filing shall be on 8 1/2 x 11 inch white paper of good quality, flat and unfolded, unbound, stapled only in the top left corner, and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, and double-spaced, except for quoted material, and shall contain the name, address, and telephone number and Board of Professional Responsibility Number of the attorney filing the document. Each page shall be numbered consecutively at the bottom. In the event a case is removed from state court, documents originally prepared on 8 1/2 x 14 inch paper must be reduced to 8 1/2 x 11 inch size before filing. This rule does not apply to exhibits submitted for filing. All exhibits to pleadings shall be paginated and shall also show an exhibit number or letter.

Font size (for footnotes as well as the body of the document) shall be no smaller than 12. Lines must be double-spaced, except that: (1) quotations may be indented and single-spaced; and (2) headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the bottom margin, but no text may appear there.

Documents submitted for electronic filing in PDF format must meet the requirements of this rule.

LR5.2 Filing and Service by Electronic Means

(a) Electronic Filing. Pursuant to *Federal Rule of Civil Procedure* 5(e) and *Federal Rule of Criminal Procedure* 49(d), the Clerk's Office will accept documents filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A document filed by electronic means in compliance with this rule constitutes a written paper for the purposes of applying these rules and the *Federal Rules of Civil and Criminal Procedure*.

(b) Use of Case Management/Electronic Case Files system. At any time during the pendency of a case, the presiding judicial officer may require, absent a showing of good cause, that parties file documents electronically using the Court's Case Management/Electronic Case Files (CM/ECF) system. The Court may also order that all cases of a particular type or description be filed electronically.

(c) Filing by Facsimile. Documents may not be filed by facsimile transmission except with permission of the court, in which case an original shall be promptly substituted.

(d) Electronic Service. Pursuant to *Federal Rule of Civil Procedure* 5(b)(2)(D) and *Federal Rule of Criminal Procedure* 49(b), the Notice of Electronic Filing generated by the Court's Electronic Case Filing System (CM/ECF) shall constitute service of the electronically filed document on persons who have consented to electronic service and waived the right to service by personal service or first class mail.

LR5.3 Filing of Discovery

When filing disclosures under *Federal Rule of Civil Procedure* 26(a)(1) and (2) and discovery requests and responses pursuant to *Federal Rule of Civil Procedure* 5(d), only excerpts of the documents which are directly germane to the matter under consideration by the Court may be filed.

III. PLEADINGS AND MOTIONS

LR7.1 Motion Practice

(a) Briefing Schedule. Unless the court notifies the parties to the contrary, briefing schedule for all motions shall be: (1) the opening brief and any accompanying affidavits or other supporting material shall be served and filed with the motion; (2) the answering brief and any accompanying affidavits or other material shall be served and filed no later than 10 days after the service of the opening brief, except that parties shall have 20 days in which to respond to dispositive motions; (3) any reply brief and accompanying material shall be served and filed no later than 5 days after the service of the answering brief. The above briefing schedule may be set aside if ordered by the court, or if within 10 days after the filing of a motion, a stipulated briefing schedule is approved by the court.

(b) Brief Format. Briefs shall include a concise statement of the factual and legal grounds which justify the ruling sought from the court. Briefs shall comply with the format requirements of Local Rule 5.1 and shall not exceed 25 pages in length unless otherwise ordered by the court. This page limitation shall also apply to all briefs filed in bankruptcy appeals, in accordance with Bankruptcy Rule 8010(c).

(c) Reply Briefs. Unless otherwise stated by the court, reply briefs are not necessary and are not required by the court. A reply brief shall not be used to reargue the points and authorities included in the opening brief, but shall directly reply to the points and authorities contained in the answering brief.

(d) Supplemental Briefs. No additional briefs, affidavits, or other papers in support of or in opposition to a motion shall be filed without prior approval of the court, except that a party may file a supplemental brief of no more than five (5) pages to call to the court's attention developments occurring after a party's final brief is filed. Any response to a supplemental brief shall be filed within five days after service of the supplemental brief and shall be limited to no more than five (5) pages.

LR7.2 Motion Disposition

In all divisions except the Southern, motions will be disposed of routinely as soon as possible after they become at issue, unless a hearing has been requested and granted or unless the court desires a hearing on the motions. Under exceptional circumstances, the court may act upon a motion prior to the expiration of the response time. Failure to respond to a motion may be deemed a waiver of any opposition to the relief sought.

In the Southern Division, (Chattanooga), all **nondispositive** motions will be placed upon a motion docket which shall be held before a magistrate judge. Counsel and any unrepresented parties will be notified of the hearing date by the clerk. Counsel, by agreement, may request that a motion be placed on the docket on a particular date. However, scheduling will be at the discretion of the court. After notice to opposing counsel, any party may request that the hearing of a motion be continued from the date on which it is set to the next scheduled motion day. A continuance may be requested only once, and, if the request is allowed, it shall be the responsibility of counsel making the request to notify all other counsel or unrepresented parties. After a motion has been continued one time, counsel shall either submit an agreed order disposing of the motion, or appear at the hearing on the motion. Exceptions may be made for good cause. Counsel are encouraged to agree upon orders disposing of pending motions, when, in good faith, no opposition can be made. Agreed orders shall be submitted to the court on or before the Thursday preceding the motion day. Motions will generally be heard in the order of the date upon which the case was filed. This sequence may be altered at the discretion of the court. Prevailing counsel will be responsible for the preparation and submission of an order in conformance with the court's ruling. Other counsel should endeavor to agree on the form of this order. If no agreement can be reached within five (5) days after the court's ruling in open court, a proposed order shall be submitted to the clerk, and such proposed order shall state that it is being submitted under the five-day rule. Objections to the proposed order must be filed within five (5) days of its submission. If no objection is filed, the proposed order will be entered by the clerk. If an objection is filed, the court will determine the appropriate form of the order.

LR7.3 Redaction of Personal Information from Filed Documents.

Parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all unsealed documents filed with the Court, including exhibits thereto, unless otherwise ordered by the Court.

A. Social Security numbers. If an individual's social security number must be included in a document, only the last four digits of that number should be used.

B. Names of minor children. If the involvement of a minor child must be mentioned, only the initials of the child should be used.

C. Dates of birth. If an individual's date of birth must be included in a document, only the year should be used.

D. Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.

E. Home Addresses. If home addresses must be included in a document, only the city and state should be used.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review filed documents to assure compliance with this rule.

This rule applies to documents filed electronically and to documents filed on paper.

When necessary to the disposition of an issue before the Court, a party wishing to file a document containing the personal data identifiers listed above may either:

a. File an unredacted version of the document under seal. Such documents may be filed by tendering them to the Clerk with a written request that they be filed under seal pursuant to this rule.

b. File a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list may be amended as of right.

The unredacted version of the document or the reference list will be retained by the Court as part of the record. The Court may require the party to file a redacted copy for the public file.

LR7.4 Citation of Authority

Citation to decisions of the United States Supreme Court shall include citations to the United States Reports, Supreme Court Reporter, and to the United States Supreme Court Reports, Lawyers' Edition, where such citations exist. For more recent decisions, *United States Law Week* citations or computer assisted legal research citations will be accepted. Citations to any federal court decision or administrative opinion not fully reported in one of the publications of the West Publishing Company, or citations to any decisions of a state court other than Tennessee, shall be accompanied by a copy of the entire text of the decision. Citations to federal statutes shall include at least the title and the section designation as the statute appears in the United States Code. Citations to reported state cases shall include at least the "official" state reporter citation and the regional reporter when available. The court will **NOT** consider improperly cited authority.

LR7.5 Resolution of Dispositive Motions by Magistrate Judge

(a) Consent to Magistrate Judge. With the approval of the district judge to whom the case is assigned, the parties to a dispositive motion may consent to the final resolution and entry of judgment on the dispositive motion by a magistrate judge.

(b) Final Rulings by Magistrate Judge. If all parties consent to a final ruling on the motion by a magistrate judge and one is available to hear the motion, the motion will be heard by a magistrate judge pursuant to 28 USC §636(c)(1). Unless the parties specify otherwise in their consent to the exercise of jurisdiction by the magistrate judge, any appeal shall be to the court of appeals pursuant to 28 USC §636(c)(4). Consent to a final ruling on a dispositive motion by a magistrate judge does not waive any party's right to have other matters heard by a district judge.

LR9.1 Social Security Cases

(a) Providing Social Security Number to Commissioner of Social Security. Any person seeking judicial review of a decision of the Commissioner of Social Security under Section 405(g) of the Social Security Act [42 U.S.C. §405(g)] shall provide, on a separate paper attached to the complaint served on the Commissioner of Social Security, the social security number of the worker on whose wage record the application for benefits was filed. The person shall also state in the complaint that the social security number has been attached to the copy of the complaint served on the Commissioner of Social Security. Failure to provide a social security number to the Commissioner of Social Security will not be grounds for dismissal of the complaint.

(b) Time Limit for Response by Commissioner of Social Security Under Title II and XVI of Social Security Act. In all cases filed against the Social Security Administration for benefits under the provisions of Titles II and XVI of the Social Security Act, as amended, 42 U.S.C. §401, *et seq*., the United States shall file its answer or other response within sixty (60) days.

(c) Extensions for Plaintiff and Defendant. Requests for additional time to complete any action required or allowed under this rule or the Federal Rules of Civil Procedure will be granted upon motion with an attached affidavit or declaration prepared by the party, the party's appropriate representative, or the party's attorney of record. The affidavit or declaration shall set forth the reasons why an extension is deemed necessary. This subsection does not preclude the parties from submitting, for the court's consideration, a proposed agreed order for extension.

(d) Cases Remanded to the Commissioner of Social Security Pursuant to "Sentence Six" of 42 U.S.C. §405(g). Whenever a social security case has been remanded by the court to the Commissioner pursuant to the sixth sentence of 42 U.S.C. §405(g), the United States Attorney shall file a report informing the court of the agency action taken on remand and the final agency decision that resulted therefrom. If the agency decision is fully favorable to the plaintiff, the court shall then reopen the case and enter a final judgment for the plaintiff. If issues in the controversy remain, the Commissioner shall file a supplemental transcript, the case shall be reopened for further proceedings on the merits, and a new briefing schedule issued by the Clerk.

(e) Social Security Cases Transferred From Other Districts. When a social security case is transferred from another district to the Eastern District of Tennessee, the Clerk's Office shall send notice to plaintiff's counsel and the United States Attorney that the case has been entered on the docket and that the Commissioner has 60 days from the date of the notice within which to file an answer or response to plaintiff's complaint. If an answer has already been filed in the case, an appropriate briefing schedule will be established and set forth in the notice.

LR9.3 Petitions for Writ of Habeas Corpus

(a) State Prisoners. When a petition for the writ of habeas corpus is filed by a person in state custody, either the necessary filing fee or an application to proceed *in forma pauperis* must accompany the petition. Every petition for habeas corpus relief by a state prisoner must comply with the Rules Governing Section 2254 Cases In The United States District Courts. All pro se petitions for writs of habeas corpus must be filed on a set of standardized forms to be supplied, upon request, by the Clerk without cost to the petitioner. Counsel filing a petition for writ of habeas corpus need not use a standardized form, but any petition shall contain essentially the same information as set forth on said form.

(b) Federal Prisoners. When a petition for the writ of habeas corpus is filed by a person in federal custody, a filing fee is not required. Every petition for habeas corpus relief by a federal prisoner must comply with the Rules Governing Section 2255 Proceedings In The United States District Courts. All pro se petitions for writs of habeas corpus must be filed on a set of standardized forms to be supplied, upon request, by the Clerk without cost to the petitioner. Counsel filing a petition for writ of habeas corpus need not use a standardized form, but any petition shall contain essentially the same information as set forth on said form.

(c) Reference to Magistrate Judge. Should an evidentiary hearing be required relative to a petition for the writ of habeas corpus, the court may refer the matter to a United States magistrate judge for a report and recommendation.

LR9.4 Rule Applicable To Death Penalty

(a) Application of Rule. This rule applies to cases filed pursuant to 28 U.S.C. §2254 and otherwise which challenge a state court's imposition of a sentence of death.

(b) Petitioner's Statement. Whenever such a case is filed in the district court, petitioner shall file with the petition a statement which certifies the existence of a sentence of death and the emergency nature of the proceedings, and which lists the proposed date of execution, any previous cases filed by petitioner in federal court, and any cases filed by petitioner which are pending in any other court. Petitioner may use Form 6CA-99 or the equivalent thereof for the statement. Appendix No. 3 to these rules is the model form.

(c) Duty of District Court Clerk. The clerk of the district court shall immediately forward to the clerk of the court of appeals a copy of the statement filed by petitioner pursuant to E.D.TN. LR9.4(b) and shall immediately notify the clerk of the court of appeals by telephone upon issuance of a final order in the case. When the notice of appeal is filed, the clerk of the district court shall transmit the available records forthwith to the court of appeals.

(d) Motion for Stay. A petitioner who seeks a stay of execution shall attach to the petition a copy of each state court opinion and judgment involving the matter to be presented. The petition shall also state whether the same petitioner has previously sought relief arising out of the same matter from this court or from any other federal court. The reasons for denying relief given by any court that has considered the matter shall also be attached. If reasons for the ruling were not given in a written opinion, a copy of the relevant portions of the transcript may be supplied.

(e) Issuance of Certificate of Probable Cause. If a certificate of probable cause is issued in any such case, the court will grant a stay of execution to continue until such time as the court of appeals expressly acts with reference to it.

(f) Issues Not Raised or Exhausted in State Courts. If any issue is raised that was not raised or has not been fully exhausted in state court, the petition shall state the reasons why such action has not been taken.

(g) Second or Successive Petitions. A second or successive petition for habeas corpus relief may be dismissed if the court finds that it fails to allege new or different grounds for relief, if the failure of the petitioner to assert those grounds in a prior petition constitutes an abuse of the writ, or if the petition is frivolous and entirely without merit.

The court has established internal working procedures for judicial officers to follow judicial officers to follow in handling capital habeas corpus petitions in a standing order which is incorporated by reference and attached to these Rules as Appendix No. 4.

APPENDIX 4

Incorporated into Local Rule 9.4

AA. The pro se law clerk in each division shall act as a liaison between the district judge assigned to the case, the magistrate judge assigned to the case, and the Clerk's Office.

AA. After the case has been opened by the Clerk's Office, the pro se law clerk will take the file to the assigned district judge, who will"

1. Rule on the application to proceed *in forma pauperis*, if there is one, and the motion to stay execution and, if granted, do the following;
2. Rule on the motion to appoint counsel, if there is one;
3. Refer the case to the magistrate judge for appointment of counsel, for disposition of all non-dispositive motions, for scheduling of deadlines, for establishment of a litigation budget for payment of investigative, expert, and other reasonably necessary services, and for payment recommendation of attorney and other fees.
4. If the assigned district judge is to be unavailable for 48 hours, the pro se law clerk will take the file to the next available district judge in order of rotation, who will act temporarily on matters that need immediate attention.

AA. After the district judge's order has been docketed, the pro se law clerk will take the file to the assigned magistrate judge, who will expeditiously:

1. Appoint counsel, establish the amount of compensation and authorize interim vouchers on a monthly basis.
    a. Counsel will be appointed from the court approved panel of attorneys in each division of the district. (See Appendix A).
    b. Counsel must possess the following qualifications:
        - At least one attorney must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in the court in felony cases. 21 U.S.C. §848 (q)(6).
        - The court may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation. 21 U.S.C. §848 (q)(7).
    c. Appointed counsel will be compensated, in the court's discretion, at the rate of not more than $125 per hour. 21 U.S.C. §848 (q)(10) (A). The rate of compensation to be paid associates and paralegals shall be addressed at the first status conference to be held in the case.
    d. Interim vouchers must be submitted on a monthly basis, with the vouchers due on or before the 10th of each month. The magistrate judge shall review all interim vouchers before the vouchers are presented to the district judge.
        - Interim vouchers must be on an interim CJA Form 30, "Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel." Counsel shall strike the pre-printed numbers on all but the first CJA Form 30 submitted and substitute the number appearing on the first voucher thereafter. Each voucher

shall be numbered in series and include the time period covered by the voucher.

- Attorneys' fees and reimbursable expenses through the last day of the previous month shall be claimed on each interim voucher. The first interim voucher submitted shall reflect all attorneys' fees and reimbursable expenses incurred form the date of appointment. In the event there are no fees or expenses incurred for any given month, counsel shall file with the Clerk a statement to that effect on the form provided herein.
- All interim vouchers shall be supported by detailed and itemized time and expense statements. Chapter VI, as well as the applicable provisions of Chapter II, Part C of the Guidelines for the Administration of the Criminal Justice Act, outlines the procedures and rules for claims by CJA attorneys and should be followed regarding each voucher.
- At the conclusion of the representation, counsel shall submit a final voucher seeking payment for representation provided during the final interim period. The final voucher shall also set forth in detail the time and expenses claimed for the entire case, including all documentation. Counsel shall reflect all compensation and reimbursement previously received on the appropriate line of the final voucher.

e. Counsel may be reimbursed for out-of-pocket expenses reasonably incurred incident to the representation. Counsel should incur no single expense item in the excess of $500.00 without prior approval of the court. Such approval may be sought by filing an application with the clerk stating the nature of the expense, the estimated dollar cost and the reason the expense is necessary to the representation.

- Recurring expenses, such as telephone toll calls, photocopying and photographs, which aggregate more than $500.00 on one or more interim vouchers are not considered single expenses requiring court approval.
- Telephone toll calls, telegrams, photocopying, and photographs can all be reimbursable expenses if reasonably incurred. General office overhead, such as rent, secretarial help, and telephone service, is not a reimbursable expense, nor are items of a personal nature. Expenses for service of subpoenas on fact witnesses are not reimbursable, but rather are governed by Fed. R. Crim. P. 17 and 28 U.S.C. §1825.
- Travel by privately owned automobile should be claimed at the rate currently prescribed for federal judiciary employees who use a private automobile for conduct of official business, plus parking fees, ferry fares, and bridge, road and tunnel tolls. Transportation other than by privately owned

automobile should be claimed on an actual expense basis. Air travel in "first class" is prohibited.

- With respect to travel outside the attorney's county of practice, the $500.00 rule should be applied in the following manner: If travel expenses, such as air fare, mileage, parking fees, meals and lodging will aggregate an amount in excess of $500.00, the travel should receive prior court approval.
- Actual expenses incurred for meals and lodging while traveling outside the attorney's county of practice must conform to the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations.

f. The Federal Defender will usually be appointed as co-counsel unless that office has a conflict or other good cause is shown why the Federal Defender should not be appointed.

2. Schedule a status conference with petitioner's counsel and the Attorney General for the State of Tennessee for establishing deadlines and a litigation budget for payment of investigative, expert, and other reasonably necessary services.

a. Fees and expenses for investigative, expert and other reasonably necessary services shall not exceed $7500, unless payment in excess of that limit is certified by the court as necessary and the amount of the excess payment is approved by the chief judge of the circuit. 21 U.S.C. §848(q)(10)(B).

b. No ex parte proceeding, communication, or request pertaining to fees and expenses for investigative, expert and other reasonably necessary services will be considered unless a proper showing is made concerning the need for confidentiality. 21 U.S.C. §848(q)(9).

DD. At the status conference, the magistrate judge will establish the following:

1. The deadlines for filing the habeas corpus petition, or an amendment to the petition if a petition has already been filed, the response to the habeas corpus petition, and petitioner's traverse.
2. The deadlines for filing a dispositive motion and the response to the motion.
3. The deadlines for filing the parties' witnesses and exhibits lists.
4. The magistrate judge shall also establish a tentative date for an evidentiary hearing with the district judge.

DD. The magistrate judge will rule on all non-dispositive motions and discovery disputes.

1. As soon as they are filed, the pro se law clerk will take all non-dispositive motions and discovery disputes to the magistrate judge.
2. The parties may appeal a ruling of the magistrate judge to the district judge by filing objections within ten (10) days of service of the magistrate judge's order. Fed. R. Civ. P. 72(a).

DD. The district judge to whom the case is assigned shall conduct the evidentiary hearing.

DD. The district judge to whom the case is assigned shall have the authority to vary these procedures as necessary in his discretion.

LR12.1 Extensions of Time to Respond

(a) Stipulation of Parties. If all counsel agree, parties shall be entitled to a twenty-day initial extension of time in which to respond to the complaint, to a cross-claim, or to a counterclaim. Counsel seeking the extension shall inform the court of agreement between counsel by sending a stipulation to the Clerk's Office and a copy of this stipulation to all other counsel in the case. No order is necessary for an initial extension of time, but any extension of time beyond an initial extension shall not be allowed except by order of the court.

(b) Certification of Communication with Client. The court may, in its discretion, require that a written, signed certificate be returned to the court verifying that counsel has communicated with his or her client and the client was made aware of the ramifications of the request for delay.

LR15.1 Form of a Motion to Amend and Its Supporting Documentation

A party who moves to amend a pleading shall attach the original and one copy of the amendment to the motion. Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, shall, except by leave of court, reproduce the entire pleading as amended and may not incorporate any prior pleading by reference. A failure to comply with this rule is not grounds for denial of the motion.

LR16.1 Pretrial Orders and Conferences in Civil Actions

(a) Pretrial Orders and Conferences. In accordance with Rule 16 of the Federal Rules of Civil Procedure, the district judge or magistrate judge assigned to the case will ensure that Rule 16(b), F.R.Civ.P., is complied with and that by means of a scheduling conference, telephone, mail or other suitable means, a scheduling order is entered as soon as is practicable but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant, except in the following classes of cases:

(1) Social Security cases;
(2) Petitions for relief under 28 USC §2254 and 2255;
(3) Actions brought under 42 USC §1983 in which the plaintiff is *pro se* and is in the custody of either state or federal authorities;
(4) Bankruptcy appeals;
(5) Student loan cases.

(b) Authority of Counsel and Parties. At all pretrial conferences, each party who is not proceeding pro se shall be represented by an attorney who has the authority to bind that party regarding all matters identified by the court for discussion at the conference and all reasonably related matters. If a settlement will be discussed at a pretrial conference, the court may require that the parties or party representatives with full settlement authority be present at the pretrial conference or be available by telephone.

(c) Rule 16(b) Scheduling Conferences. These conferences may be conducted by a district judge, magistrate judge or designee of the court.

LR16.2 Pretrial Conferences in Criminal Cases

In all criminal cases in which a defendant has entered a plea of not guilty to an indictment or information and is represented by counsel, a notice of pretrial conference shall be provided to the defendant and his or her counsel. This pretrial conference shall be held by the United States magistrate judge or by the district judge pursuant to Rule 17.1 of the Federal Rules of Criminal Procedure. If no evidence is to be taken and matters of law are discussed only, the defendant does NOT have to be present. If no evidence is to be taken, an incarcerated defendant must request to attend the pretrial conference five (5) days prior to the scheduled conference. If evidence is to be taken at the pretrial conference, the defendant must be present. Counsel who will actually try the case must appear at the pretrial conference.

The proceedings will be electronically or stenographically recorded. No admissions made by a defendant or his or her attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and his or her attorney.

Following the pretrial conference, an order will be prepared by the district judge, the magistrate judge or by counsel if so directed. If the order contains stipulations, it shall be signed by the defendant(s), defendant(s)' counsel, and the United States Attorney. When so signed, the order shall be binding on the parties at trial and shall be modified only to prevent manifest injustice.

LR16.3 Alternative Dispute Resolution

(a) Reference by Court. The court may, in the judge's discretion and with the consent of the parties, refer any civil case, including adversary proceedings removed from bankruptcy court, for settlement conference or any other method of alternative dispute resolution deemed appropriate to the needs of the case except that arbitration can only be authorized as provided in 28 U.S.C. §654. Additionally, mediation can be ordered by the court without consent of the parties as set forth in Local Rule 16.4.

(b) Consideration of ADR by Litigants. Pursuant to the Alternative Dispute Resolution Act of 1998, 28 U.S.C. §§651 *et seq.,* litigants in all civil cases, except those exempted as indicated below, shall consider the use of an alternative dispute resolution process at an appropriate stage in the litigation.

Civil cases which are exempted from this requirement are:

- Deportation Actions
- Forfeiture and statutory penalty actions
- Freedom of Information actions
- Government collection actions
- Judgments - actions to enforce or register
- Prisoner actions to vacate sentence, for habeas corpus, or for mandamus
- Pro Se Prisoner Cases
- Social Security reviews
- Summons/subpoenas - proceedings to enforce/contest government summons and private party depositions
- Third-party IRS tax actions
- Fed. R. Civ. P. 11 Proceedings
- Student loan cases

LR16.4 Court Annexed Mediation

(a) Mediation Referrals and Withdrawals.

With or without the agreement of the parties in any civil action, except those exempted pursuant to Local Rule 16.3, the Court may refer all or part of the underlying dispute to Mediation pursuant to this Local Rule. Any mediation reference may be withdrawn by the presiding judge upon a determination for any reason that the matter referred is not suitable for Mediation. Once an order has been entered directing that the parties participate in a Mediation, the parties will be required to do so unless the Court enters an order withdrawing the Mediation Reference.

(b) Definitions.

For purposes of this Rule:

(1) Mediator.

"Mediator" means an attorney approved by the Court in accordance with paragraph (k) of this Rule.

(2) Mediation.

"Mediation" means a procedure presided over by an approved Mediator to promote conciliation, communication, and the ultimate settlement of a civil action pending in this Court.

(3) Mediation Conference.

"Mediation Conference" means a settlement conference or meeting conducted by a Mediator during the course of a Mediation.

(4) Mediation Reference.

"Mediation Reference" means a directive contained within a scheduling order or other order entered by the Court directing the parties to participate in a Mediation.

(5) Presiding Judge.

"Presiding Judge" means the Judicial Officer assigned to a civil action.

(6) Mediation Report.

"Mediation Report" means a report filed with the Court by a Mediator in the form provided by the District Court Clerk.

(7) Mediation Panel.

"Mediation Panel" includes the Mediators who are approved by the Court to participate in Mediation.

(c) Approval of Mediators.

The Court shall approve those persons who are eligible and qualified to serve as Mediators. The Court shall have complete discretion and authority to withdraw the approval of any Mediator at any time.

(d) List of Approved Mediators.

A list of those Mediators comprising the Mediation Panel shall be maintained in the office of the United States District Court Clerk and shall be made available to counsel and to the public upon request.

(e) Neutrality of a Mediator.

No Mediator shall accept an engagement in a Mediation in circumstances in which he or she has a personal bias or prejudice relative to the parties or issues involved in the dispute being mediated.

(f) Mediators as Counsel in Other Cases.

No Mediator who has been engaged as a Mediator shall appear as counsel in the matter upon which he or she was engaged as a Mediator or in any substantially related matter. No person who is approved and designated as a Mediator shall for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

(g) Disclosure of Conflicts.

Prior to accepting an engagement as a Mediator, each Mediator shall disclose to the parties all actual or potential conflicts of interest reasonably known to the Mediator, any current, past, or expected future professional relationship, consulting relationship, personal relationship, or pecuniary interest with or in any party or attorney involved in the Mediation, as well as any other circumstance or matter which would result in the disqualification of a judicial officer under 28 U.S.C. §455. Mediators shall also disclose to all parties any offer made to the Mediator before completion of the mediation process of a future professional, consulting, or pecuniary relationship with any party or attorney or law firm involved in the underlying dispute.

(h) Confidentiality and Restrictions on the Use of Information.

The Mediation Conference and all proceedings relating thereto, including statements made by any party, attorney, or other participant, are confidential and are inadmissible to the same extent as discussions of compromise and settlement are inadmissible under Federal Rule of Evidence 408. Mediation proceedings may not be reported, recorded, placed into evidence, or made known to the Presiding Judge, or construed for any purpose as an admission against interest. Mediators shall not divulge the details of information imparted to them in confidence in the course of Mediations without the consent of the parties, except as otherwise may be required by law.

(i) Compensation of Mediators.

Mediators shall be compensated at rates to be agreed upon by the parties and the Mediator. Compensation for any Mediator's services shall be borne equally by the parties to the Mediation unless other arrangements are agreed to by the parties.

(j) Subpoenas.

Neither the parties to the Mediation nor any other person in any forum shall attempt to subpoena the Mediator or any documents created in connection with, and for the purpose of, mediation, without first obtaining leave of court to do so.

(k) Qualification of Mediators.

An individual may be approved to serve as a Mediator if, within the discretion of the Court, he or she meets the following qualifications:

* All Mediators must be lawyers, licensed to practice in the State of Tennessee, and admitted to practice before the United States District Court for the Eastern District of Tennessee.

* All Mediators must have practiced law at least five years.

* All Mediators must agree to report the results of their mediations in accordance with paragraph (m) of this rule.

* All Mediators approved after January 1, 1997, must have had at least forty (40) hours of formal mediation training as approved by the court and such procedural training as shall be provided by the Clerk of the Court.

* All Mediators must agree that they will be available to conduct at least one Mediation per year without compensation.

* All Mediators must commit to at least one year of service on the Mediation Panel.

* All Mediators must agree to participate in the reporting and research requirements of the program as they may be developed; it is provided, however, that no reporting or research requirement shall require a Mediator to divulge any confidence in violation of Paragraph (h) of this Rule.

* All Mediators must agree to comply with the provisions of this Rule and of any Standing Order which may be entered in any Division of this Court for purposes of implementing this Rule.

* All Mediators must agree to provide to the Court such biographical and other information as the Court may require.

* Any lawyer approved by the United States District Court for Middle District of Tennessee as an ADR panel member shall be deemed approved as a Mediator in this District and may conduct mediations in accordance with this

Local Rule and the Standard Operating Procedures in force and effect in this District's Federal Mediation Program.

* Pursuant to 28 U.S.C. §653(b), magistrate judges of this court may service as neutrals and conduct judicial settlement conferences provided they have received formal training to serve as neutrals in the alternative dispute resolution process.

(l) Party Attendance Required.

Unless otherwise excused by the Mediator in writing, all parties, or party representatives, and any required claims professionals (*e.g.*, insurance adjusters) shall be present at the Mediation Conference with full authority to negotiate a settlement. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the Court.

(m) Mediation Report.

Within five days following the conclusion of each Mediation Conference, the Mediator shall file a Mediation Report on a form provided by the Clerk indicating whether all required parties were present. The report should also indicate: (a) whether the case settled; (b) whether the Mediation was continued with the consent of the parties; or (c) whether the Mediation was terminated without a settlement. No other information shall appear on the Mediation Report nor, without the consent of all parties, shall any other or additional report or communication regarding the status of the Mediation be provided by the Mediator to the Presiding Judge.

(n) Standing Orders.

Each Division of the Court may prescribe by Standing Order procedures that are specific to that particular Division and which are necessary to the implementation of this Local Rule. Such Standing Order shall not conflict with the provisions of this Rule, however.

(o) Special Procedures When Mediation is Ordered Without the Consent of the Parties.

(1) In the event the parties cannot agree on a Mediator, the Administrator shall select three approved Mediators and one additional approved Mediator for each additional party over two. After receiving the Administrator's designation, the parties shall each strike one name from the court's designations. The remaining Mediator shall be assigned to the case unless a timely objection is made to the Administrator and upheld. In that event, or in the event the Mediator selected cannot serve, the process will be repeated.

(2) In the event the parties cannot agree on the compensation of the Mediator, the parties shall submit the dispute to the Administrator who shall set the Mediator's compensation.

(3) At the request of an approved Mediator, the cost of his or her services or any portion thereof may be taxed as court costs.

(p) Administration of the Mediation Program.

Pursuant to 28 U.S.C. §651(d), C. Clifford Shirley, United States Magistrate Judge, is hereby appointed as the Administrator of the Court's Mediation Program. The Clerk of the Court

shall designate an employee in each of the four divisions of the court to assist the Administrator by serving as mediation coordinators in each of the respective divisions of the court. The Administrator shall promulgate, and update from time to time, standard operating procedures for the court's mediation program. The standard operating procedures shall conform to the requirements of the Act and the local rules of this court.

The court's mediation program shall be known as "The Federal Mediation Program."

The Administrator shall be responsible for communications between the approved mediators and the court and vice versa.

The Administrator shall chair a standing committee on mediator qualifications and approval which will make recommendations to the chief judge of the district concerning the addition and removal of approved mediators. The chief judge shall appoint two other members of this standing committee.

LR16.5 Arbitration

(a) Arbitration Referrals and Withdrawals. The court may refer any civil action (including any adversary proceeding in bankruptcy) to arbitration under the provisions of this Rule if the parties consent to such reference. Such reference may not be made, however, where --

(1) the action is exempted from alternative dispute resolution pursuant to Local Rule 16.3(b);

(2) the action is based on an alleged violation of a right secured by the Constitution of the United States;

(3) jurisdiction is based in whole or part on 28 U.S.C. §1343; or,

(4) the relief sought consists of money damages in an amount greater than $150,000, exclusive of punitive damages, interest, costs, and attorney fees.

Any arbitration reference may be withdrawn by the presiding judge upon a determination for any reason that the matter referred is not suitable for arbitration. Once an order is entered directing the parties to participate in arbitration, the parties will be required to complete the arbitration process unless the court enters an order withdrawing the arbitration reference.

(b) Definitions. For purposes of this Rule:

(1) Arbitrator. "Arbitrator" means a person approved by the court in accordance with paragraph (k) of this Rule.

(2) Arbitration. "Arbitration" means a procedure presided over by an approved arbitrator and conducted in accordance with this Rule and 28 U.S.C. §§654-658.

(3) Arbitration Hearing. "Arbitration hearing" is the proceeding conducted before an approved arbitrator for the purpose of presenting evidence, arguments of counsel, briefs of law, etc., to the arbitrator to enable him or her to make an arbitration award. It is an expedited, adversarial hearing which is intended to reduce cost and delay in appropriate cases.

(4) Presiding Judge. "Presiding judge" means the judicial officer assigned to a civil action. A magistrate judge is deemed to be a "presiding judge" only if the case has been referred to the magistrate judge pursuant to 28 U.S.C. §636(c).

(5) Arbitration Reference Order. "Arbitration Reference Order" means an agreed order which is presented by the parties to the presiding judge, which is approved by him and which is filed by the Clerk. The agreed order shall be in substantially the same form as Appendix I to this Rule. Forms are available from the Clerk.

(6) Arbitrator Panel. "Arbitrator panel" is the panel of arbitrators approved by the court.

(7) Arbitration Award. "Arbitration award" is the written decision of the arbitrator.

(8) Standing Committee on Arbitrator Approval. "Standing Committee on Arbitrator Approval" shall include the judicial officer or court employee selected to serve as the Administrator of the arbitration program and two other members. This committee shall be appointed by the chief judge and serve at the chief judge's pleasure.

(9) The court's arbitration program shall be known as "The Federal Arbitration Program."

(c) Approval of Arbitrators. The court shall approve those persons who are eligible and qualified to serve as arbitrators. The court shall have complete discretion and authority to withdraw the approval of any arbitrator at any time.

(d) List of Approved Arbitrators. A list of those arbitrators comprising the arbitration panel shall be maintained in the office of the United States District Court Clerk and shall be made available to counsel and to the public upon request.

(e) Neutrality of an Arbitrator. No arbitrator shall accept an engagement in an arbitration proceeding in circumstances in which he or she has a personal bias or prejudice relative to the parties or issues involved in the dispute being arbitrated.

(f) Arbitrators as Counsel in Other Cases. No arbitrator who has been engaged as an arbitrator shall appear as counsel in the matter for which he or she was engaged as an arbitrator or in any substantially related matter. No person who is approved and designated as an arbitrator shall for that reason be disqualified from appearing and acting as counsel in any other case pending before the court.

(g) Disclosure of Conflicts. Prior to accepting an engagement as an arbitrator, each arbitrator shall disclose to the parties all actual or potential conflicts of interest reasonably known to the arbitrator, any current, past, or expected future professional relationship, consulting relationship, personal relationship, or pecuniary interest with or in any party or attorney involved in the arbitration, as well as any other circumstance or matter which would result in the disqualification of a judicial officer under 28 U.S.C. §455. Pursuant to 28 U.S.C. §655(b)(2), arbitrators are subject to the disqualification rules set forth in 28 U.S.C. §455. Arbitrators will also disclose to all parties any offer made to the arbitrator before completion of the arbitration process of a future professional, consulting, or pecuniary relationship with any party or attorney or law firm involved in the underlying dispute.

(h) Confidentiality and Restrictions on the Use of Information. The arbitration hearing and all proceedings relating thereto, including statements made by any party, attorney, or other participant, are confidential and are inadmissible in evidence at the trial *de novo* except as permitted by 28 U.S.C. §657(c)(3). Arbitration proceedings may be closed to the public by the arbitrator.

(i) Compensation of Arbitrators. Subject to any regulations which may be promulgated by the Judicial Conference of the United States, arbitrators shall be compensated at rates to be agreed upon by the parties and the arbitrator. Compensation and expenses for any arbitrator's services shall be borne equally by the parties to the arbitration unless other arrangements are agreed to by the parties.

(j) Subpoenas/Immunity. Fed. R. Civ. P. 45 shall apply to the issuance of subpoenas for the attendance of witnesses and the production of documentary evidence at any arbitration hearing.

Neither the parties to the arbitration nor any other person in any forum shall attempt to subpoena the arbitrator or any documents created in connection with, and for the purpose of, arbitration without first obtaining leave of court to do so.

All individuals serving as arbitrators pursuant to this Rule are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords persons serving in such capacity.

(k) Qualification of Arbitrators. An individual may be approved to serve as an arbitrator if, within the discretion of the court, he or she meets the following qualifications:

* All arbitrators must be approved by the chief judge and must be listed on the roster of approved arbitrators of the American Arbitration Association, the Federal Mediation and Conciliation Service, a similar, reputable arbitration service, or must be lawyers, licensed to practice in the state of Tennessee, and admitted to practice before the United States District Court for the Eastern District of Tennessee.

* All arbitrators, except those approved as non-lawyer arbitrators, must have practiced law at least five years.

* All arbitrators shall take the oath or affirmation described in 28 U.S.C. §453 and shall complete any training required by the court.

* All arbitrators must agree that they will be available to conduct at least one arbitration per year without compensation.

* All arbitrators must commit to at least one year of service on the arbitration panel.

* All arbitrators must agree to comply with 28 U.S.C. §§654-658, the provisions of this Rule and of any Standing Order which may be entered in any Division of this court for purposes of implementing this Rule.

* All arbitrators must agree to provide to the court such biographical and other information as the court may require.

* All arbitrators must be recommended by the Standing Committee on Arbitrator Approval and determined by the chief judge to be competent to perform the duties of arbitrator. Arbitrators may be approved based on formal training in arbitration procedures, prior experience as an arbitrator, or some combination thereof. The chief judge shall certify, in his discretion, as many arbitrators as are determined to be necessary for proper operation of the program.

The court specifically reserves the right to limit the size of the arbitrator panel. Any person whose name appears on the list of approved arbitrators may ask at any time to have his/her name removed or, if selected to decide a case, decline to serve but remain on the list.

* Applications to become an approved arbitrator shall be submitted to the Administrator of the court's arbitration program. Applications shall be submitted in the form set forth in Appendix II to this Rule. Forms are available from the clerk.

(l) Procedures in Connection with the Reference to Arbitration.

(1) The approval and entry of the Arbitra tion Reference Order by the presiding judge begins the arbitration process. *See* Appendix I.

(2) Upon entry of the Arbitration Reference Order, the Clerk shall serve copies of it on the designated arbitrator, counsel of record, and any parties proceeding *pro se*.

(3) The presiding judge may refuse to approve a proposed Arbitration Reference Order if, in the court's discretion, the case is not appropriate for arbitration or if such approval would cause undue delay in the prompt resolution of the case. A proposed Arbitration Reference Order submitted within 30 days of the filing of a scheduling order in the case will be presumptively timely. Once an Arbitration Reference Order is approved by the presiding judge and filed, any trial date previously scheduled is automatically canceled, unless otherwise ordered by the court.

(4) Unless otherwise stipulated by all parties, formal discovery pursuant to Fed. R. Civ. P. 26 through 37 will be stayed upon entry of an Arbitration Reference Order. Notwithstanding this stay, the arbitrator may allow, or the parties may agree to, limited discovery utilizing the procedures set forth in Fed. R. Civ. P. 26 through 37 or other less formal means. The arbitrator shall have the authority and discretion to control the course, scope and manner of discovery while the case is under reference to arbitration. The arbitrator shall also have authority to resolve discovery disputes while the case is under reference to arbitration.

(m) Procedures for the Arbitration Hearing and the Filing of the Arbitration Award

(1) Once the Arbitration Reference Order is served on the arbitrator, he or she shall consult promptly thereafter with counsel of record and any *pro se* parties for the purpose of arranging a schedule for completion of any pre-hearing discovery, any other necessary pre-hearing preparations and the setting of a date, time and place for the arbitration hearing.

(2) Within 30 days of service of the Arbitration Reference Order on the arbitrator, he or she shall file with the Clerk an "Arbitrator's Notice of Scheduling" in substantially the same form as Appendix III hereto. Forms are available from the Clerk.

(3) The arbitration hearing shall be held in a suitable place designated by the arbitrator or, if space is available, in the United States Courthouse in a space assigned by the Clerk.

(4) The arbitration hearing and the filing of the arbitration award shall take place not later than 150 days after entry of the Arbitration Reference Order unless the parties obtain an order from the court granting an extension based on good cause shown.

(5) If the arbitration award is not filed within the time allowed in paragraph 4 of this section, the Clerk shall automatically restore the case to the docket of the presiding judge and notify him and the parties that the arbitration has been terminated.

(6) The hearing before the arbitrator may proceed in the absence of any party who, after notice, fails to be present. Additionally, if a party fails to participate in the hearing, the court may impose appropriate sanctions including, but not limited to, the striking of any demand for a trial *de novo* filed by that party. *See also* Fed. R. Civ. P. 16(c)(9) and (f). If any party fails to pay the arbitrator's fees or expenses in a timely manner, the cost of his or her services, or any portion thereof, may be taxed as costs.

(7) The arbitrator is authorized to administer oaths or affirmations and each party shall have the right to cross-examine witnesses. The arbitrator shall be authorized to make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing including, but not limited to, requiring the parties to submit pre-hearing statements to the arbitrator and requiring service of same on parties.

(8) The FEDERAL RULES OF EVIDENCE shall be used as the guide to the admissibility of evidence, but shall not be controlling. The arbitrator shall control the admission of evidence at the arbitration hearing.

(9) A party may have a recording and transcript made of the arbitration hearing at the party's expense.

(10) Unless otherwise stipulated by the parties, the arbitration award shall state in writing the reasoning underlying the award.

(11) It shall be the responsibility of the arbitrator to serve counsel of record and any *pro se* parties with a copy of the arbitration award. In accordance with 28 U.S.C.§657(b), such award shall be treated as confidential and not be made known to any judge who might be assigned to the case until the district court has entered final judgment in the case or the case is otherwise terminated. The arbitrator shall not file the award with the Clerk. That is the responsibility of the prevailing party or plaintiff. *See* paragraph (n)(1).

(n) Trial *De Novo* or Entry of Judgment

(1) An arbitration award made by an arbitrator, or a panel of arbitrators selected under section (o)(6) of this rule, along with proof of service of such award on the party or parties by the prevailing party or by the plaintiff, shall be filed with the Clerk by the prevailing party or plaintiff within 5 days of service of the arbitration award on the prevailing party or plaintiff. To make certain that the arbitrator's award is not considered by the court or jury either before, during or after the trial *de novo*, the Clerk shall, upon the filing of the arbitration award, enter onto the docket only the words "arbitration award filed" and the date and nothing more, and shall retain the arbitrator's award in a separate file in the Clerk's Office.

(2) Within 30 days of the filing of an arbitration award with the Clerk, any party may file a written demand for a trial *de novo* in the district court.

(3) Upon demand for a trial *de novo*, the action shall be restored to the docket of the presiding judge and treated for all purposes as if it had not been referred to arbitration.

(4) In the event no demand for trial *de novo* is filed within the designated time period, the Clerk shall unseal the award, notify the presiding judge, and enter it as the judgment of the court. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of a court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

(o) Miscellaneous Provisions

(1) Consent to arbitration shall be freely and knowingly obtained. No party or attorney shall be prejudiced in any way for refusing to participate in arbitration. The district judges and magistrate judges may advise the attorneys and parties of the availability of the arbitration program, but, in doing so, shall also advise the attorneys or parties that they are free to withhold consent without adverse consequences.

(2) There shall be no *ex parte* communication between an arbitrator and any counsel or party.

(3) The court will presume that damages are not in excess of $150,000 unless counsel or a party proceeding *pro se* certifies that damages exceed such amount.

(4) The Administrator of the court's arbitration program may, from time to time, amend Appendices I, II, and III to this Rule in order to conform to the needs of the program and may do so without amendment to the body of this Rule.

(5) Nothing in this Rule shall prevent the parties, upon their own initiative and by mutual consent, from arbitrating a pending matter pursuant to the provisions of 9 U.S.C. §§2 *et seq*., TENN. CODE ANN. §§29-5-301 *et seq.*, or other state arbitration statutes. An agreement to so arbitrate, without an order of reference or authorization by the court, shall not be subject to this Rule or to the Alternative Dispute Resolution Act of 1998. 28 U.S.C. §§651 *et seq*. Arbitrators who are approved pursuant to this Rule are not restricted from participating in these non-court-annexed arbitrations.

(6) Nothing in this Rule shall prevent the parties from stipulating to a panel of three arbitrators and proceeding under the provisions of this Rule. One of the arbitrators shall be selected by the parties as chairperson of the panel. In order for a valid arbitration award to be made, a majority of the arbitrators in such cases must agree to the award and sign it. A separate dissent may be filed with the arbitration award.

(7) At any time before the arbitration hearing, the parties may stipulate in writing to waive their rights to request a trial *de novo*. Such stipulation shall be submitted to the presiding district judge or magistrate judge for approval and shall be filed. In the event of such stipulation, judgment shall be entered on the arbitration award in accordance with paragraph (n)(4), above.

(p) Standing Orders. Each Division of the court may prescribe by Standing Order procedures that are specific to that particular Division and which are necessary to the implementation of this Local Rule. Such Standing Orders shall not conflict, however, with the provisions of 28 U.S.C. §§654-658 or this Rule, however.

(q) Administration of the Arbitration Program. Pursuant to 28 U.S.C. §651(d), the court shall appoint a judicial officer or employee by separate order to serve as administrator of

the Federal Arbitration Program. The Clerk of the Court shall designate an employee in each of the four divisions of the court to assist the Administrator by serving as arbitration coordinators in each of the respective divisions of the court. The Administrator shall promulgate, and update from time to time, standard operating procedures and any necessary forms for the court's arbitration program. The standard operating procedures shall conform to the requirements of the Act and the local rules of this court.

The Administrator shall be responsible for communications between the approved arbitrators and the court and vice versa.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT (GREENEVILLE, KNOXVILLE, CHATTANOOGA OR WINCHESTER)

_____)		
(fill in))		
Plaintiff(s))		
)		
v.)	No.	(fill in case no.)
)		(fill in last names of
)		assigned judges)
_____)		
(fill in))		
Defendant(s))		

ARBITRATION REFERENCE ORDER

In accordance with the provisions of 28 U.S.C. §§654-658 and Local Rule 16.5, the parties in this case have voluntarily consented to the entry of this order and reference of this case to the court's Federal Arbitration Program.

The parties have selected (fill in) _____ as their arbitrator. He or she is a member of the court's arbitrator panel and has agreed to serve as the arbitrator in this case.

CONSENT

Signatures	Party Represented	Date
_____		
_____		
_____		
_____		

ORDER OF REFERENCE

IT IS HEREBY ORDERED that this case is referred to the court's Federal Arbitration Program for proceedings consistent with 28 U.S.C. §§654-658 and Local Rule 16.5.

IT IS FURTHER ORDERED that the arbitration hearing and the filing of the arbitration award shall take place not later than 150 days after entry of this Arbitration Reference Order unless the parties obtain an extension from the court based on good cause shown.

IT IS FURTHER ORDERED that all parties shall participate in good faith in the arbitration proceeding. Fed. R. Civ. P. 16(c)(9) and (f).

IT IS FURTHER ORDERED that should the arbitration hearing and the filing of the arbitration award not take place within the time allowed, the Clerk is directed to automatically restore the case to the court's docket and to notify the presiding judge unless, on motion of a party and for good cause shown, the court extends this deadline.

_____ _____

Date Signature of Presiding District or Magistrate Judge

OR

ORDER OF NON-REFERENCE

The court declines to refer the case to the Federal Arbitration Program on the following ground(s): _____

_____

_____

_____

Date Signature of Presiding District or Magistrate Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

FEDERAL ARBITRATION PROGRAM

APPLICATION TO BECOME AN APPROVED ARBITRATOR

NAME: _____

BPR NO: _____

FIRM NAME: (IF APPLICABLE) _____

OFFICE ADDRESS: _____

_____

_____

OFFICE PHONE: _____

IN ORDER TO BE CERTIFIED AS AN ARBITRATOR IN THIS COURT, YOU MUST MEET THE FOLLOWING QUALIFICATIONS AND ALSO AGREE TO BE BOUND BY THE FOLLOWING:

* All arbitrators must be approved by the chief judge and must be listed on the roster of the American Arbitration Association, the Federal Mediation and Conciliation Service, a similar reputable arbitration service, or must be lawyers, licensed to practice in the State of Tennessee, and admitted to practice before the United States District Court for the Eastern District of Tennessee.

* All arbitrators, except those approved as non-lawyer arbitrators, must have practiced law at least five years.

* All arbitrators shall take the oath or affirmation described in 28 U.S.C. §453 and shall complete any training required by the court.

* All arbitrators must agree that they will be available to conduct at least one arbitration per year without compensation.

* All arbitrators must commit to at least one year of service on the arbitration panel.

* All arbitrators must agree to comply with 28 U.S.C. §§654-658, the provisions of this Rule and of any Standing Order which may be entered in any Division of this court for purposes of implementing this Rule.

* All arbitrators must agree to provide to the court such biographical and other information as the court may require.

* All arbitrators must submit sufficient written proof of their qualifications to perform the duties of arbitrator to the Standing Committee on Arbitrator Approval. Proof of qualification can be based on formal training, experience, or some combination thereof.

YOUR APPLICATION WILL BE REVIEWED BY THE COURT'S STANDING COMMITTEE ON ARBITRATOR APPROVAL. MEMBERS OF THIS COMMITTEE THE PROGRAM ADMINISTRATOR, _____ ____ AND _____. YOU WILL BE NOTIFIED BY A COMMITTEE MEMBER OF ACTION TAKEN ON YOUR APPLICATION. UNLIKE THE COURT'S MEDIATION PROGRAM, THE COURT RESERVES THE RIGHT TO LIMIT THE SIZE OF ITS ARBITRATOR PANEL.

DATE ADMITTED TO PRACTICE BEFORE
THE TENNESSEE SUPREME COURT: _____

DATE ADMITTED TO PRACTICE BEFORE
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE: _____

NUMBER OF YEARS OF LAW PRACTICE (*this can include time spent clerking for a federal or state judge):* _____

Please set forth the training you have received which qualifies you for the Federal Arbitration Program (use attachments if appropriate):

_____

_____

_____

_____

_

I HEREBY CERTIFY, UNDER PENALTY OF PERJURY, THAT THE INFORMATION STATED HEREIN BY ME IS TRUE AND CORRECT. I MEET ALL THE REQUIREMENTS TO BECOME A FEDERAL COURT ARBITRATOR AND I HEREBY AGREE TO COMPLY WITH THE PROVISIONS OF THE PROGRAM AS SET FORTH ABOVE.

_____

_____ SIGNATURE

DATE: _____

Return the completed form to:

Honorable William B. Mitchell Carter
P.O. Box 11350
Chattanooga, TN 37401

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT (GREENEVILLE, KNOXVILLE, CHATTANOOGA OR WINCHESTER)

_____ (fill in) Plaintiff(s)	)	
v.	)	No. (fill in case no.) _____ (fill in last names of assigned judges)
_____ (fill in) Defendant(s)	)	

ARBITRATOR'S NOTICE OF SCHEDULING

Pursuant to 28 U.S.C. §§654-658 and Local Rule 16.5 (m), the undersigned approved arbitrator hereby gives notice that:

- the captioned action was referred to the undersigned pursuant to an Arbitration Reference Order filed (fill in date); and,

- an arbitration hearing is scheduled to commence at (fill in time) on (fill in date) at (fill in location) _____

- if a continuance or continuances of the hearing are granted by the undersigned, the hearing will be completed and the arbitration award will be served on counsel of record and any pro se parties in time to allow the parties to comply with the requirements of Local Rule 16.5(m)(4).

- the undersigned has served a copy of this Arbitrator's Report of Scheduling on counsel of record and any pro se parties by regular mail or hand delivery.

Date: _____ _____
Signature of Arbitrator

_____
Typed or Printed Name of Arbitrator

IV. PARTIES

LR23.1 Designation of "Class Action" in the Caption

In any case sought to be maintained as a class action, the complaint, or other pleading asserting a class action, shall include next to its caption the legend "Class Action."

LR24.1 Procedure for Notification of Any Claim of Unconstitutionality

In any action, suit or proceeding in which the United States or any agency, officer, or employee thereof is not a party and in which the constitutionality of an Act of Congress affecting the public interest is drawn into question, or in any action, suit, or proceeding in which a state or agency, officer, or employee, thereof is not a party, and in which the constitutionality of any statute of that state affecting the public interest is drawn into question, the party raising the constitutional issue shall notify the court of the existence of the question either by checking the appropriate box on the civil cover sheet or by stating on the pleading that alleges the unconstitutionality, immediately following the title of that pleading, "Claim of Unconstitutionality" or the equivalent. Failure to comply with this rule will not be grounds for waiving the constitutional issue or for waiving any other rights the party may have. Any notice provided under this rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading requirement set forth in the federal rules or statutes.

V. DISCOVERY

LR26.1 Multiparty or Complex Litigation

In multiparty or complex litigation, the parties may apply to the court for an order permitting service of interrogatories and requests for production of documents by letter or by some other informal means. In making such an application, the parties shall provide a proposed order setting forth the means of conducting discovery upon an informal basis, including the proposed procedures for service, response, and verification of the discovery contemplated.

LR26.2 Sealing of Court Records

(a) Public Record. Except as otherwise provided by statute, rule or order, all pleadings and other papers of any nature filed with the Court ("Court Records") shall become a part of the public record of this Court.

(b) Procedure. Court Records or portions thereof shall not be placed under seal unless and except to the extent that the person seeking the sealing thereof shall have first obtained, for good cause shown, an order of the Court specifying those Court Records, categories of Court Records, or portions thereof which shall be placed under seal. The Court may, in its discretion, receive and review any document *in camera* without public disclosure thereof and, in connection with any such review, determine whether good cause exists for the sealing of the document. Unless the Court orders otherwise, the parties shall file with the Court redacted versions of any Court Record where only a portion thereof is to be placed under seal.

(c) Criminal Matters. The United States Attorney, through his or her assistants, shall present to the Court a proposed order in connection with any indictment, complaint or bill of information that the United States Attorney wishes to file under seal. Unless otherwise ordered by the Court, indictments, complaints and bills of information filed under seal shall be unsealed after all defendants have made an appearance before the Court.

(d) Expiration of Order. Court Records filed under seal in civil and criminal actions shall be maintained under seal for thirty (30) days following final disposition (including direct appeal) of the action. After that time, all sealed Court Records shall be unsealed and placed in the case file unless the Court, upon motion, orders that the Court Records be maintained under seal beyond the thirty (30) days. All such orders shall set a date for the unsealing of the Court Records.

LR33.1 Interrogatories

Should it appear to the court, whether by motion or otherwise, that a party has used subparts as a means to circumvent the limitation on number, the party, along with the filing attorney, may be subjected to sanctions. Answers to interrogatories must be supplemented as may be required by the facts and circumstances of the case, and by the Federal Rules of Civil Procedure.

LR34.1 Inspections Made Pursuant to Court Order

When any party to any action is permitted, pursuant to an order of the court, to inspect the records of any person not a party to the action, the party inspecting such records shall, within a reasonable time period, provide all other parties to the action with an opportunity to copy any documentation obtained or copied as a result of such inspection.

LR37.2 Form of Discovery Motions

Any discovery motion filed pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure shall include, in the motion itself or in an attached memorandum, a verbatim recitation of each interrogatory, request, answer, response, and objection which is the subject of the motion or a copy of the actual discovery document which is the subject of the motion. The filing or serving of unnecessary discovery motions, applications, requests, or objections will subject the offender to appropriate remedies, including the imposition of costs and counsel fees.

VI. TRIALS

LR38.2 Continuances

Cases shall not be continued upon stipulation of counsel. Continuances will be granted only upon written motion with supporting affidavit and a showing of good cause.

LR38.3 Difficult Questions of Law or Evidence

Counsel shall give advance notice to the court of any anticipated questions of law or evidence which might delay the trial.

LR43.1 Taking of Testimony - Witnesses

Counsel shall endeavor to have a sufficient number of witnesses present to avoid delay of trial. Counsel shall examine witnesses from the lectern unless leave to approach has been granted. When permission to approach a witness has been granted for the purpose of examination of the witness with regard to an exhibit, counsel shall resume examination from the lectern as soon as the examination with regard to the exhibit has been completed.

LR43.2 Taking of Testimony - Character and Expert Witnesses

Except by leave of the court, not more than three (3) witnesses shall be called to impeach or sustain the character of any party or other witness in a case, or to give expert or value testimony as to any matter. If, upon written application, and for good cause shown, additional expert witnesses are allowed to testify, the costs of these witnesses shall in no event be taxed against the adverse party.

LR43.3 Exhibits

Exhibits should be marked in advance of trial and their admissibility stipulated whenever possible. Exhibits should be offered into evidence when they become relevant rather than at the conclusion of the evidence. Documents and other exhibits must be shown to opposing counsel prior to their use in court. Counsel shall provide photocopies of all exhibits to opposing counsel. Where practical, the court should be provided with copies also.

After the final determination of an action, counsel or parties shall have thirty (30) days within which to withdraw exhibits and depositions. In the event the exhibits and depositions are not withdrawn, the clerk shall, after notice to the parties, destroy or otherwise dispose of them.

Oversized exhibits may be used for demonstration purposes during trial, but an 8 1/2 x 11 copy shall be given to the courtroom deputy.

LR43.4 Stipulations

In jury cases, counsel shall confer with each other before offering a stipulation to the court for consideration.

LR48.1 Jurors

No attorney, party, or representative of either may interrogate a juror after a verdict has been returned or the trial has been otherwise concluded, without prior permission of the court.

LR51.1 Suggested Charges to the Jury

If a case is to be tried to a jury, counsel shall, unless otherwise ordered by the court, furnish the court with suggested charges to the jury. Each suggested charge shall be written on a separate sheet of paper and supported by citations of authority on novel questions of law. Counsel shall supply copies of suggested charges to opposing counsel.

LR52.1 Proposed Findings of Fact and Conclusions of Law

In non-jury cases, counsel shall supply the court with suggested findings of fact and conclusions of law, supported by citations of authority, at least ten (10) days prior to the trial date unless otherwise ordered. Failure to comply with the time requirements of this rule may, in the discretion of the court, result in the dismissal of the plaintiff's action or the entry of default against the defendant. Counsel shall supply copies of suggested findings of fact and conclusions of law to opposing counsel.

VII. JUDGMENT

LR54.1 Taxation of Costs

If counsel for the litigants in a civil case are able to agree on costs, they need not file a bill of costs with the clerk. If counsel cannot agree, a bill of costs shall be filed by the prevailing party with the clerk within thirty (30) days from the entry of judgment. A copy of the bill of costs shall be served upon opposing counsel. The opposing party shall file written objections within thirty (30) days from the date of service. The clerk shall then assess the costs.

Guidelines on preparing Bills of Costs are available from the Clerk of Court offices in the Greeneville, Knoxville, and Chattanooga divisions.

(a) Guidelines for Preparing Bills of Cost

(a) *Filing of Certificate of Costs.* After entry of the final judgment allowing costs to the prevailing party, said party within thirty (30) days shall prepare a certificate of costs that shall contain an itemized schedule of costs incurred and a statement that such schedule is correct and that the charges were actually and necessarily incurred. The original certificate shall be filed with the clerk and a copy served upon opposing counsel.

(b) *Objections to Cost Bill.* If no objections are filed within thirty (30) days after service of the cost bill, the clerk shall tax the costs which appear properly claimed. If objections are filed, the clerk shall consider the objections and shall tax costs subject to review by the court as provided by Rule 54(d)(1), Fed. R. Civ. P.

(c) *Witnesses and Experts.* Where witnesses, expert and otherwise, appear voluntarily or are subpoenaed by the regular service of subpoena within the district, or outside the district as allowed by law, they shall be entitled to fees provided by statute to be taxed as costs in the case. In all civil cases, witness fees will be taxed only upon the certificate by counsel for the prevailing party requesting the same. Said certificate shall contain the following information:

(1) the name of the witness;

(2) the place of residence, or the place where subpoenaed, or the place from which the witness voluntarily traveled without a subpoena to attend upon said case;

(3) the number of days the witness actually testified in court;

(4) the number of days the witness traveled to and from the place of trial or hearings and the exact number of miles traveled; and

(5) the manner of travel, that is, whether by air, railroad, bus or private automobile.

(d) *Clerk Taxing Witness Fees.* The clerk shall tax the witness fees after the certificate is filed, provided the information contained therein corresponds with the facts upon the records of the court. If, however, there is a discrepancy between the certificate and the court records, the clerk shall tax the witness fees in accordance with the official records.

(e) *Items Taxable as Costs.* It shall be the policy of the court to allow certain items of costs and disallow other items as specified in any special order of the court. It is the general policy of this Court that only those items set forth in 28 U.S.C. §§1821 and 1920 may be taxable as costs under Fed. R. Civ. P. 54(d)(1). Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437 (1987). See also Sales v. Marshall, 873 F.2d 115, 119 (6th Cir. 1989). Items not set forth in 28 U.S.C. §§1821 and 1920 will not be taxed absent specific authorization set forth in another statutory provision or a contract between the parties. When costs are sought for items not listed in 28 U.S.C. §§1821 and 1920, the procedure best followed is an application to the court for an approving order made before the costs are incurred.

Guidance on the court's general policy on the taxation of items set forth in 28 U.S.C. §§1821 and 1920 is as follows:

(1) *Fees of the Clerk and United States Marshal.* The filing fees paid to the clerk either for an original filing or for removal shall be taxable. Fees of the United States Marshal as set forth in 28 U.S.C. §1921 shall be taxable. The costs for service by a sheriff or other authorized person shall be taxable, except that counsel have the duty to mitigate costs by having process served by a person located as close as possible to the person to be served in order to minimize legal fees. Costs for service by a private process server will not be taxed.

(2) *Fees of the Court Reporter.* The fees of a court reporter for any or all of the stenographic transcript necessarily obtained for use in the case causes the most confusion in taxation of costs. When a transcript is obtained for purposes of appeal, the cost of the original is taxable if the appeal is successful.

(i) Transcripts of trial proceedings obtained for the purposes of preparing proposed findings of fact and conclusions of law, when directed by the court in a bench trial, shall be taxable as a matter of course to the successful party.

(ii) Daily transcripts of trial proceedings obtained for the convenience of counsel are not taxable as costs unless advance authority has been sought and obtained from the court.

(iii) Costs of depositions are taxable if the depositions were reasonably necessary in light of the circumstances at the time they were taken. Costs of the taxing party's copies of depositions will be taxable, if reasonably necessary for use in the case, whether or not used at trial. The attendance fee of the reporter is taxable but no mileage or per diem costs shall be taxed. In this regard, this court deems that Seventy-five ($75.00) Dollars per day is a reasonable maximum attendance fee and that sum is hereby set as the maximum attendance fee taxable as costs. The Judicial Conference of the United States has established rates for transcripts that are chargeable for official transcripts in this court. Those fees are hereby adopted as the maximum taxable transcription fees notwithstanding what fee may have been charged to the party by the court reporter. A schedule of fees is available from the clerk's office.

Extra fees charged by reporters for attendance, mileage, per diem, expeditious handling, etc., shall not be taxable unless advance authorization was sought and received from the Court.

(3) *Disbursements for Printing.* Fees and disbursements for printing are

generally not involved at the trial court level and need not be a subject of this policy statement.

(4) *Witness Fees.* Witness fees are allowed pursuant to testimony and necessary attendance at trial and for each day of necessary travel. Counsel will be expected to justify the witness fee for any day that a particular witness has not testified, as reflected in the courtroom minutes. In addition, a subsistence fee may be allowed for each day that the witness is so far removed from his residence as to prohibit return thereto from day to day. Such subsistence shall be determined pursuant to the governmental rate in effect at that time. The subsistence per diem rate may be obtained from the clerk's office.

Taxation may be made for the cost of each day the witness is necessarily in attendance and is not limited only to those costs incurred for the actual day upon which the witness testified. Fees will be limited, however, to the days of actual testimony and the days required for travel if no showing is made that the witness necessarily attended for a longer time. Witness fees are taxable whether or not a subpoena was issued.

Fees for mileage of witnesses have long been a subject of debate in the courts. There is a split of decisions as to whether or not travel expenses for witnesses coming from outside the jurisdiction are allowable in an amount which is in excess of that equal to mileage fees for the one hundred (100) mile limitation of subpoena power. Inasmuch as it seems that the one hundred (100) mile rule is somewhat unfair in this day of modern transportation, the following travel expenses policy is adopted:

(i) Any witness attending in this court or before any person authorized to take his or her deposition, if within the jurisdiction of this court, is entitled to a mileage fee for going to and from his or her place of residence. The mileage fee shall be equal to the mileage fee that government employees would be entitled to at the time the expense was incurred by the witness. The government mileage rate may be obtained from the clerk's office.

(ii) A witness attending from outside the jurisdiction shall be allowed the same mileage fee as set forth in (i) above, up to the maximum amount of five hundred (500) miles one way, which is the approximate maximum mileage that may be assessed within the jurisdiction;

(iii) Provided, however, that witnesses shall be allowed the cost of common-carrier transportation if that cost does not exceed the maximum amount allowable for mileage;

(iv) In all other cases where parties expect to call a witness who would incur expenses in an amount greater than above, authorization from the court prior to commencement of the trial must be sought and received before such expenses may be taxed.

(5) *Expenses of Counsel at Depositions.* Fees of counsel for traveling to and attending depositions are not taxable unless prior approval has been obtained as set forth in 4(iv) above.

(6) *Expert Witness Fees.* The fee for an expert witness is limited to the statutory fee for witnesses unless prior authorization is received from the court as set forth in 4(iv) above.

(7) *Exemplification and Copies of Papers.* Fees for exemplification and copies of papers necessarily obtained for use in the case will be limited to those documents used at the trial and received in evidence. Section 1920 (4) provides for the taxation of the cost of producing copies of papers necessarily obtained for use in the case. The general rule followed by this court is that duplicating expenses are properly taxable only to the extent that the copies were used as exhibits at trial or were furnished to and used by the court or opposing counsel. See e.g., Sun Publishing Co. v. Mecklenburg News, Inc., 594 F. Supp. 1512, 1524 (E.D. Va. 1984). Although not required to submit a bill of costs so detailed as to make it impossible economically to recover copying costs, the prevailing party is required to provide the best breakdown obtainable from retained records. See Northbrook Excess & Surplus Insurance Co. v. Proctor & Gamble Co., 924 F.2d 633, 643 (7th Cir. 1991). Furthermore, as stated by one court, the losing party "should be taxed for the cost of reproducing relevant documents and exhibits for use in the case, but should not be held responsible for multiple copies of documents, attorney correspondence, or any of the other multitude of papers that may pass through a law firm's xerox machines." Fogleman v. ARAMCO, 920 F.2d 278, 286 (5th Cir. 1991). The costs of copies obtained for counsel's own use or for counsel's convenience are not taxable. The fee of an official for certification or proof of non-existence of a document is taxable.

(8) *Maps, Charts, Models, Photographs, Summaries, Computations and Statistical Summaries.* The cost of photographs, eight (8) x ten (10) inches in size or less, is taxable if the photographs are admitted into evidence. Enlargements greater than eight (8) x ten (10) inches are not taxable except by prior order of the court. Costs of models are not taxable except by prior order of the court. The cost of compiling summaries, computations and statistical comparisons is not taxable.

(9) *Attorney's Fees*. The statutory fees for counsel are taxable costs (See, 28 U.S.C. §1923). Attorney fees are not taxable except by order of the court. Attorney's fees will not be taxed as costs under Fed. R. Civ. P. 54(d)(1) and this rule. Attorney's fees must be requested by separate motion to the court pursuant to Fed. R. Civ. P. 54(d)(2).

(10) *Fees to Masters, Receivers and Commissioners.* Fees to masters, receivers and commissioners are taxable as costs, unless otherwise ordered by the Court. When costs are sought for items not listed in 28 U.S.C. §1920, counsel are advised to apply to the court for approval in advance of trial.

(g) *Computer Assisted Legal Research.* Section 1920 does not provide for the recovery of Computer Assisted Legal Research (CALR). While some courts have allowed them, the majority hold that they are not taxable. See, e.g., Leftwich v. Harris-Stowe State College, 702 F.2d 656,695 (8th Cir. 1983); Ortega v. Kansas City, 659 F. Supp. 1201, 1219 (D. Kan. 1987). Charges for CALR are, like costs for manual legal research, incidental to an attorney's services and are not properly taxed as costs. Wolfe v. Wolfe 570 F. Supp. 826, 828 (D.S.C. 1983).

(h) *Jury Costs and Fees in Settled Cases.* If any civil action is settled by the parties during trial or just prior to trial, the court may assess all juror costs and fees equally against the parties and their counsel, or otherwise, as the court may determine.

(i) *Costs Taxed by Appeals Court (Rule 39(d), Federal Rules of Appellate Procedure).* Any costs taxed in the mandate of the circuit court of appeals shall be forthwith entered by the clerk.

(j) *Costs on Appeal in District Court (Rule 39(e), Federal Rules of Appellate Procedure).* All costs taxable under Rule 39(e), Federal Rules of Appellate Procedure, will be deemed waived unless the party entitled thereto files a bill of costs in accordance with paragraph (a) of this rule within twenty (20) days of the issuance of the mandate by the circuit court.

LR54.2 Attorneys' Fees and Nontaxable Expenses

Unless otherwise provided by statute or order of the Court, a motion for attorneys' fees and related nontaxable litigation expenses, pursuant to Fed. R. Civ. P. 54(d)(2), must be filed no later than thirty (30) days after entry of judgment. If a motion for attorneys' fees or nontaxable expenses is not filed within thirty (30) days, such fees and expenses shall be waived. The Court may, on motion filed within the time provided for filing a motion for attorneys' fees or nontaxable expenses, extend the time for filing such a motion.

LR58.2 Satisfaction of Judgment

When a judgment for the payment of money has been satisfied, counsel for the prevailing party shall prepare and file with the clerk a notice of Satisfaction of Judgment.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

LR67.1 Deposit of Funds into Court

A. Orders Pursuant to Fed. R. Civ. P. 67. It shall be the responsibility of any party seeking an order of the court for the deposit of funds pursuant to Fed. R. Civ. P. 67 to prepare such an order for the signature of the court and to serve the same upon the clerk of this court.

B. Deposit in Non-Income-Earning Account. Unless otherwise ordered by the court, the clerk shall deposit registry funds in a non-income-earning account.

C. Investment in Income-Earning Account. Upon motion, the court may order the clerk to invest certain registry funds in an income-earning account. Unless otherwise ordered by the court upon motion, the funds shall be deposited in a money-market deposit account maintained by the court and secured by adequate collateral, as determined by the Federal Reserve bank and administered by the Treasury Investment Program of the U.S. Treasury Department. The motion and any order prepared for the court's signature pursuant to this rule directing investment in an income-earning account other than the court's money market deposit account shall provide for an investment that will be in compliance with applicable provisions of the law regulating the investment of public monies, shall provide for proper disposition of future earnings, and shall set out with particularity the following:

1. The form of deposit;
2. The amount to be invested;
3. The type of investment to be made by the clerk of the court, i.e., insured money fund, certificate of deposit, etc.;
4. The name and address of the private institution where the deposit is to be made;
5. The rate of interest at which the deposit is to be made, if possible;
6. The length of time the money should be invested, whether it should be automatically reinvested, etc., keeping in mind that some investments include a penalty for early withdrawal;
7. The name and address of the designated beneficiary or beneficiaries, if known;
8. Such other information that may be deemed appropriate under the facts and circumstances of the particular case.

D. Registry Administration Fee. Pursuant to Judicial Conference authorization, the Director of the Administrative Office of the United States Courts has established, pursuant to Judicial Conference Authorization, a registry fee to be assessed for the administration of funds held in the registry of the court and placed in interest-bearing accounts or instruments. The administrative fee assessed on a particular registry account shall be determined according to the fee schedule in effect at the time the account was opened or according to any amended fee schedule that is applicable to the account. The administrative fee is withdrawn from the income earned on the registry account at the time the account is closed for distribution. All fees collected shall be deposited by the clerk into the United States Treasury. The director publishes the fee schedule periodically in the Federal Register.

E. Disbursement of Registry Funds.

1. Motion for Disbursement. All motions for disbursement of registry funds shall specify the principal sum initially deposited, the amount(s) of principal funds to be disbursed, and to whom the disbursement is to be made, along with complete mailing instructions (full address and ZIP code of payee and attorney), and have attached thereto a proposed order of disbursal.
2. Order of Disbursal. Each proposed order of disbursal shall contain therein the following language: "The clerk is authorized and directed to draw a check(s) on the funds on deposit in the registry of this court in the principal amount of $_____ plus all accrued interest, minus any statutory fees, payable to_____, and mail or deliver the check(s) to _____ at (full address with ZIP code)." If more than one check is to be issued on a single order, the portion of principal due each payee must be separately stated. Counsel must also provide the Social Security number or taxpayer identification number for each payee and complete mailing or delivery instructions for each payee.
3. Payee Name. On all checks drawn by the clerk on deposits made into the registry of the court, the name of the payee shall be written as that name appears in the court's order providing for disbursement.
4. Time of Disbursement. The clerk will issue disbursements as soon after receipt of the Order of Disbursement as the business of the clerk's office allows, except when it is necessary to allow time for a check or draft to clear or when an order is appealable, and the disbursement may not be made until the time for appeal has expired.

F. Funds for Minors, Incompetents, and the Incapacitated. When money has been paid to the clerk on behalf of a minor, incompetent, or incapacitated person, a guardian or conservator shall be qualified under state law within thirty (30) days, and the clerk shall, upon presentation of a certified copy of the appointment and qualification, disburse the funds to that guardian or conservator as ordered by the court.

G. Designated and Qualified Settlement Funds. Funds invested with the court for the purpose of settlement are subject to additional rules under 26 U.S.C. §468B. To comply with the requirements found in Section 468B, the order required in subsection (b) must also contain the following information:

H. The deposit is identified as a settlement fund;

I. Liability is resolved by the settlement agreement, as described in 26 U.S.C. §468B or 26 C.F.R. §1.468B-1(c);

J. Designation of a person outside the court as the administrator responsible for obtaining the employer identification number for the fund, filing all fiduciary tax returns, and paying any tax.

LR68.1 Settlements

When the court is advised by counsel for any party, or by an unrepresented party, that the matter in controversy has been compromised and settled, the parties shall submit an agreed order of dismissal before the date on which the case is set for trial or as otherwise directed by the court. If the parties fail to comply with this rule, the court may, in its discretion, enter an order dismissing the action.

LR68.2 Taxation of Costs in Late-Settling Cases

Whenever a civil action scheduled for jury trial is settled so late that it is impossible to prevent the court from incurring juror costs, those costs may, in the discretion of the court, be assessed against one or more of the parties and/or their counsel. Juror costs include attendance fees, *per diem*, mileage and parking.

LR68.3 Judicially-Hosted Settlement Conferences

With the consent of the parties, a judge of this court may refer any civil case for a judicial settlement conference. A judicially-hosted settlement conference is an informal, flexible, noncoercive and voluntary conference designed to aid in settlement of a case.

(a) Attendance. The settlement judge may require the attendance of the parties and their representatives at the settlement conference. In the case of parties who are not individuals, any questions concerning the adequacy of the party's representation should be taken up with the settlement judge before the settlement conference is convened.

(b) Memorandum to Judge.

(1) Each party may forward, at least four days, or earlier if the settlement judge directs, prior to the scheduled conference, an *ex parte*, confidential memorandum to the designated settlement judge. The parties are encouraged to include in that memorandum the following:

a. The party's basic contentions.
b. The nature and extent of any past settlement negotiations in this case.
c. Expected monetary value of the case if liability is found.
d. Probability of success of each party (expressed as a percentage).
e. The strengths and weaknesses both factually and legally of each party's position.
f. Suitable range for settlement.
g. Any other matters deemed important (e.g., controlling case law, statutes).

(2) If a party chooses not to forward an *ex parte* confidential memorandum to the settlement judge, then that party shall forward to the settlement judge at least four days before the settlement conference as much of the information specified in (b), just above, as possible with or without sending a copy to adversary counsel or at such time as the settlement judge may direct.

(c) Disclosures by Settlement Judge. The judicial officer conducting the settlement conference shall not discuss with the trial judge assigned in the case, or with anyone else other than settlement conference participants, anything regarding the settlement conference or the facts and arguments disclosed by the parties, except that the trial judge assigned to the case will be informed of any progress made toward settlement.

(d) Good Faith. The parties shall be prepared and shall participate in good faith (F.R.Civ.P.16(f)).

(e) Neutrality. The judicial officer participating in the settlement conference shall be a neutral mediator and facilitator and shall play absolutely no role in the adjudication of the case once he is designated as settlement judge. Where requested by any party, all communications between that party and counsel and the settlement judge will be kept strictly confidential.

(f) Oral Summary. Counsel for each party shall prepare a brief oral summary (in the nature of what might be that party's final argument) to be given at the settlement conference in the presence of all participants.

(g) Format. The settlement judge shall retain complete discretion regarding the format and the manner of carrying on the settlement conference. Participation by any party shall, at all times, remain voluntary.

(h) Confidentiality. Settlement discussions are confidential as provided by Rule 408, Fed. R. Evid. This applies to written submissions requested by the settlement judge as well as statements made in connection with the settlement conference.

LR69.1 Application for Writ of Execution

When a party is entitled to enforce a judgment for the payment of money, a writ of execution or a writ of execution by garnishment may issue in accordance with Rule 69 of the Federal Rules of Civil Procedure. The party seeking execution shall make application for a writ and shall serve a copy of said application upon adverse counsel. The original of the application will be filed with the clerk, together with the appropriate number of copies. Counsel shall also prepare and file a United States Marshals Service Form 285 for each person to be served. The clerk will issue the writ and forward it, along with other documents, to the United States Marshal for service. The United States Marshal will make a return of service to the clerk and will mail a copy of the return to counsel for the executing party.

LR69.2 Money Paid Pursuant to Execution

It shall be the responsibility of counsel to determine when money has been received by the clerk pursuant to execution. Any money received by the clerk shall be placed in the court's registry account, and shall remain in this account for not less than fifteen (15) days, after which time it may be disbursed.

LR72.2 Magistrate Judges - Duties

All magistrate judges are further authorized and designated to perform other duties including, but not limited to, the following:

(a) To issue orders, warrants, or other processes as may be necessary or appropriate for the enforcement of Internal Revenue Laws including, but not limited to, warrants for seizure of property in satisfaction of tax assessments pursuant to 26 U.S.C. §7402;

(b) To order the exoneration of the forfeiture of bonds;

(c) To issue subpoenas, writs of habeas corpus *ad prosequendum* and *ad testificandum* and other writs and orders deemed necessary to obtain the presence of persons as witnesses or evidence apparently needed or desirable for proceedings in open court;

(d) To perform any additional duties not inconsistent with the Constitution and laws of the United States.

LR 72.3 Magistrate Judges - Civil Proceedings

(a) Conduct of Trials and Disposition of Cases Upon Consent of the Parties 28 U.S.C. §636(c). Upon the consent of all parties, a magistrate judge may conduct any or all proceedings in any case, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. §636(c). In the course of conducting such proceedings, a magistrate judge may hear and determine any and all pretrial and post-trial motions, including case-dispositive motions.

(b) Notice. The Clerk shall notify the parties in cases of their option to consent to have a magistrate judge conduct all proceedings as provided by law.

(c) Execution of Consent. The Clerk shall not accept a consent form unless it has been signed by all parties in a case. No consent form will be made available, nor will its contents be made known, to any district judge or magistrate judge, unless all parties have consented to the reference to a magistrate judge. No magistrate judge or other court official may attempt to persuade or induce any party to consent to the reference of any matter to a magistrate judge. This rule, however, shall not preclude a district judge or magistrate judge from informing the parties that they have the option of referring a case to a magistrate judge.

(d) Reference. After the consent form has been executed and filed, the Clerk shall transmit it to the district judge to whom the case has been assigned for approval and referral of the case to a magistrate judge. Once the case has been assigned to a magistrate judge, the magistrate judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk of Court to enter a final judgment in the same manner as if a district judge has presided.

LR72.4 Magistrate Judges - Criminal Proceedings

(a) Consent. Trial, judgment and sentencing in misdemeanor and petty offense cases may be had before a magistrate judge provided the defendant consents. See Rule 58(g) of the Federal Rules of Criminal Procedure. The consent forms to proceed before a magistrate judge in a petty offense case [AO Form 86] and in a misdemeanor case [AO Form 86A] are maintained in the magistrate judges' offices.

(b) Interlocutory Appeal. In those cases where an interlocutory appeal is taken within ten (10) days as provided in Rule 58(g)(2)(A) of the Federal Rules of Criminal Procedure, the statement specifying the decision or order from which the appeal is taken shall also set forth the reasons why the appealing party believes such decision or order is erroneous. An opposing party shall have ten (10) days within which to file a reply. The clerk shall then refer the appeal to a district judge, who may or may not require oral argument. The district judge may dismiss the appeal for lack of jurisdiction, or may affirm, modify, or reverse the magistrate judge's decision or order, or remand the case to the magistrate judge for further proceedings.

Any appeal from a magistrate judge's order on a nondispositive motion in a felony criminal case shall be taken within ten (10) days of service of the order. Notice of appeal shall be filed with the clerk within the time indicated. A brief in support of the appeal shall be filed setting forth the reasons why the magistrate judge's order is clearly erroneous or contrary to law. The court will then reconsider the matter as set forth in 28 U.S.C. §636(b)(1)(A).

(c) Appeal from Conviction or Sentence. In those cases where an appeal is taken within ten (10) days from a judgment of conviction or sentence as provided in Rule 58(g)(2)(B) of the Federal Rules of Criminal Procedure, the appealing party shall within ten (10) days of the filing of the notice of appeal file an assignment of errors and a brief and argument in support thereof. The opposing party shall have ten (10) days within which to file a reply brief. The clerk shall then refer the appeal to a district judge for decision. The district judge may or may not require oral argument and may affirm, or reverse and remand to the magistrate judge for a new trial, or reverse and dismiss the prosecution.

(d) Conviction Affirmed. In the event a district judge affirms a judgment of conviction, and the defendant does not file a notice of appeal to the Sixth Circuit Court of Appeals within ten (10) days of the entry of the order appealed from, the clerk shall return the case to the magistrate judge for the entry of an appropriate order putting into effect the judgment of conviction.

(e) Appointment of Counsel. As provided in subsections (b), (c) and (d) of 18 U.S.C. §3006A, the magistrate judge or a district judge may appoint counsel to assist a defendant with an appeal to a district judge. No defendant is eligible for appointment of counsel if the charge is a petty offense and no sentence of imprisonment has been imposed by the magistrate judge or, in the case of an interlocutory appeal, if the magistrate judge has stated on the record that no sentence of imprisonment will be imposed in the event of conviction.

(f) Record on Appeal. If the appellant intends to rely on all or a portion of the transcript or sound recording of the proceeding before the magistrate judge, it shall be his or her responsibility to

provide the district court with a transcript of the relevant evidence or to obtain permission from the district court, through the clerk, to use the sound recording in connection with his or her appeal. However, the provisions of Rule 58(g) of the Federal rules of Criminal Procedure shall apply if the appellant establishes his or her indigency. If the appellant files a portion of the transcript of the proceedings before the magistrate judge, the government may file any other portion of the transcript within the time allowed for its reply brief or may move the court for an order requiring the appellant to file the entire or designated portions of the transcript.

(g) ***Pro Se*** **Defendant.** The requirement for the content of the statement as provided in subsection (a) Federal Rules of Criminal Procedure 58(g) before United States Magistrate Judges, the requirement for the filing of briefs as provided in subsection (b) of this rule and the requirement for providing the record on appeal as provided in subsection (f) of this rule may be relaxed by the court in those cases where a defendant is proceeding *pro se.*

(h) Notice to Appellant and Appellee. In the case of a pro se appellant, immediately upon the filing of an appeal pursuant to Rule 58(g) of the Federal Rules of Criminal Procedure, the clerk shall mail a copy of the appellant's statement to the United States Attorney and shall forward a copy to the magistrate judge.

IX. DISTRICT COURTS AND CLERKS

LR77.1 Legal Advice by Court Personnel

All court personnel are forbidden from interpreting any rules of procedure or giving any legal advice. Notice is hereby given to all persons that court personnel assume no responsibility for misinformation regarding applicable procedural rules, substantive law, or interpretation of the local rules of the court.

LR79.1 Removing Case Files

No case file, or portion of a case file, shall be removed from the clerk's office or from the court without an order from the clerk of the court. An individual seeking to remove a file shall first prepare and submit an appropriate order. An individual may not retain a removed file for more than one (1) week, except in extenuating circumstances and with permission of the court.

LR79.2 Removing Transcripts

The certified copy of the transcript delivered by the official court reporter to the clerk for the records of the court, as required by 28 U.S.C. §753, may not be removed from the Clerk's Office except by order of the court or as hereinafter provided. In cases in which a transcript has been prepared at the expense of the United States Government and the United States is a party to the proceedings, the clerk's copy of the transcript may be removed to the office of the United States Attorney. During the time that the transcript is so removed, it shall be available for inspection in the office of the United States Attorney, as required by 28 U.S.C. §753.

X. GENERAL PROVISIONS

LR83.1 Electronic Devices

(a) Cell Phones, Pagers, Cameras and Laptop Computers. It is the policy of this District that no cellular phones, pagers or cameras are permitted in courtrooms. Laptop computers may be in courtrooms only if they are in the possession of attorneys engaged in proceedings before the court or in the possession of court staff. Court Security Officers may collect and retain cellular phones, pagers, cameras and laptop computers from all persons not named above entering court facilities through check points. Cellular phones that are collected by Court Security Officers may be used by their owners in the immediate area of court security check points.

At the James H. Quillen United States Courthouse in Greeneville **only**, agents employed by federal law enforcement agencies or officers assigned to or investigating federal criminal offenses as designated in writing by the United States Attorney's Office to the Office of the United States Marshal in Greeneville, Tennessee shall be permitted to bring cellular phones, pagers or laptop computers into the courthouse but not into any courtroom in the building.

(b) Personal Digital Assistants. However, an attorney using a personal digital assistant or "combination device" which combines calendaring with a cellular telephone, wireless Internet capability or camera, may bring such combination device into a courtroom on condition that the attorney enters into an agreement regarding the use of such combination device. The form for such agreement is as follows:

AGREEMENT

Attorney Name: _____
Firm Name: _____
Address: _____
_____
Telephone No.: _____
Combination Device
Make / Manufacture: _____
Model No.: _____

I agree that if permission is granted to me to use the above "combination device" that I will, upon entry into the United States Courthouse deactivate (turn off) any cell phone, camera, or wireless Internet components or devices attached to the same and will not use, or allow the use of such cell phone, camera, or wireless Internet component or device while in the Courtroom or the Courthouse. I further agree not to allow anyone else to use or attempt to use such combination device. I understand that any violation of this agreement, whether intentional or innocent, may result in the loss of my privileges to bring such combination device into the United States Courthouse and may result in revocation of any future permission to do so. I acknowledge receipt of the Local Rule/Order regarding the use of such "combination device."

I understand and agree that the United States Marshal may enforce this Agreement and any Local Rules governing use of such device and may detain such device if they believe there has been a violation of such agreement, rules or breach of or threat to security.

_____ _____
Date *Attorney Signature*

Permission to use the specific combination device is limited to the specific attorney listed above subject to E.D. TN. Local Rule _____.

This _____ day of _____.

_____
United States District or Magistrate Judge

The United States Marshal and Court Security Officers shall be provided with a copy of all such executed agreements.

Notwithstanding any provision of this rule, any District or Magistrate Judge retains the discretion to revoke for any reason an attorney's privilege to possess a combination device in a courtroom.

(c) Television and Radio Broadcasting, Tape Recording or Photographing Judicial Proceedings. No photographic, broadcasting, television, sound or recording equipment other than the recording equipment of the magistrate judges and the official court reporter, will be permitted on the floors of the courthouse occupied by the court, except as otherwise permitted by order of the judge before whom the particular case or proceeding is pending.

The foregoing amendment shall take affect upon approval of the Court. The Clerk of Court is **DIRECTED** to give appropriate public notice of this order and an opportunity to comment pursuant to 28 U.S.C. §2071(b).

Approved by the Court September 9, 2005.

ENTER:

R. Allan Edgar

R. ALLAN EDGAR
CHIEF UNITED STATES DISTRICT JUDGE

LR83.2 Public Statements by Attorneys

(a) Civil Proceedings. No lawyer or law firm associated with a civil action shall, during its investigation or litigation, make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and if such dissemination relates to:

(1) evidence regarding the occurrence or transaction involved;
(2) the character, credibility, or criminal record of a party, witness, or prospective witness;
(3) the performance or results of any examinations or tests or the refusal or failure of a party to submit to such;
(4) the attorney's opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule; and
(5) any other matter reasonably likely to interfere with a fair trial of the action.

(b) Criminal Proceedings

(1) **General Statement.** In connection with pending or imminent criminal litigation with which an attorney or a law firm is associated, it is the duty of the attorney or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by means of public communication, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(2) **Information Regarding Grand Jury Proceedings.** With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in the investigation shall refrain from making any extrajudicial statement, for dissemination by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is under way, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(3) **Information Regarding Initiation of Prosecution.** From the time of arrest, issuance of an arrest warrant or the filing of a complaint, information or indictment in any criminal matter until the commencement of trial or disposition without trial, no lawyer associated with the prosecution or defense shall release or authorize the release of any extrajudicial statement, for dissemination by any means of public communication, relating to that matter and concerning:

(a) the prior criminal record, including arrest, indictments, or other charges of crime, or the character or reputation of the accused, except that the lawyer may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in apprehension of the accused or to warn the public of any dangers he or she may present;

(b) the existence of or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(c) the performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(d) the identity, testimony, or credibility of prospective witnesses, except that the lawyer may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(e) the possibility of a plea of guilty to the offense charged or a lesser offense; or

(f) any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer during this period, in the proper discharge of his or her official or professional obligations, from announcing the facts and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charges; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him or her.

(4) **Information During the Trial.** During the trial of any criminal matter, including the period of selection of the jury, no lawyer associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview, relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by means of public communication, if there is a reasonable likelihood that such dissemination will interfere with a fair trial. A lawyer is permitted to quote from or refer without comment to public records of the court in the case.

(5) **Information After Completion of a Trial and Prior to Imposition of Sentence.** After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement for dissemination by any means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

(6) **Disclosure of Information by Courthouse Personnel.** All court personnel, including, among others, marshals, deputy marshals, court clerks, bailiffs, and court reporters, are prohibited from disclosing to any person, without authorization by the court, information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the court. The divulgence of information concerning grand jury proceedings, in camera arguments, and hearings held in chambers or otherwise outside the presence of the public is likewise forbidden.

(c) Provisions for Special Orders in Widely Publicized or Sensational Civil and Criminal Cases

In a widely publicized or sensational civil or criminal case, the court, on motion of either party or its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the parties or the rights of the accused to a fair trial by an impartial jury; the seating and conduct in the courtroom of spectators and news media representatives; the management and sequestration of jurors and witnesses; and any other matters which the court may deem appropriate for inclusion in such an order.

(d) Exceptions to This Rule

Nothing in this rule is intended (1) to preclude the formation or application of more restrictive rules relating to the release of information about juvenile or other offenders, (2) to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or (3) to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

LR83.3 Courtroom Decorum

The following rules shall govern courtroom decorum:

(a) Counsel, parties, witnesses and jurors shall be prompt.
(b) Counsel shall rise when addressing the court or making objections.
(c) Except when making objections, counsel shall conduct the trial from the lectern.
(d) Oral confrontation and argument between opposing counsel is prohibited.
(e) No person shall, by facial expression or other conduct, exhibit any opinion concerning any testimony which is being given by a witness.
(f) During trial, counsel shall not exhibit any familiarity with any witness, juror, or opposing counsel. The use of first names should be avoided.
(g) During argument to the jury, no juror shall be addressed individually.
(h) Except during the course of the trial, no counsel or party shall communicate or converse with a juror on any subject.
(i) Suggestions by counsel regarding the comfort or convenience of the jury, or propositions to dispense with argument or preemptory challenges, shall be made to the court out of the hearing of the jury.
(j) Any request to have the reporter read back testimony shall be addressed to the court.

LR83.4 Appearance and Withdrawal of Counsel

(a) Representation. No attorney shall become an attorney of record in any case or proceeding in this court unless personally retained by the litigant or client, or associated by counsel personally retained by the litigant or client.

(b) Filing of Pleadings; Effect. The filing of any pleading shall, unless otherwise specified, constitute an appearance by the person who signed the pleading. Any such appearance shall include a current address, telephone number and Board of Professional Responsibility number. Counsel may file a formal notice of appearance, but it shall not be necessary to do so.

(c) Representation *Pro Se* After Appearance by Counsel. Whenever a party has appeared by attorney, that party may not thereafter appear or act in his or her own behalf in the action or proceeding, unless an order of substitution shall first have been made by the court, after notice by the party to the attorney and to the opposing party. However, the court may, in its discretion, hear a party in open court, notwithstanding the fact that the party is represented by an attorney.

(d) Substitution of Counsel. When an attorney dies, or is removed or suspended or ceases to act as attorney in any action or proceeding, the party for whom the attorney was acting must, before any further proceedings are had in the action on his or her behalf, obtain the services of another attorney or appear in person, unless the party is already represented by another attorney.

(e) No Withdrawal Without Leave of Court. No attorney shall withdraw from representation in any action or proceeding, either civil or criminal, except by leave of the court as prescribed in subsection 83.4(f) of this rule.

(f) Withdrawal as Attorney of Record. An attorney who seeks to have his or her name removed as counsel of record shall file a motion so requesting. The court may refuse to allow an attorney to withdraw if doing such will delay the trial or for other good reason. If the client is a corporation or other artificial person or legal entity created by statute that may only appear in court through counsel, the court, absent extraordinary circumstances, shall not allow the attorney to withdraw until the client has obtained substitute counsel.

Unless the client personally joins in the motion or otherwise signifies in writing to the court his/her consent to the attorney's withdrawal, a copy of the motion to withdraw shall be furnished by the attorney to the client at least ten (10) days prior to the date the motion is filed. If a hearing date on the motion is set, the attorney shall certify in writing to the court that he/she has served the client at least five (5) days before the hearing (excluding Saturdays, Sundays and holidays) with notice (1) of the date, time and place of the hearing, and (2) that the client has a right to appear and be heard on the motion. The attorney also shall provide to the Clerk the mailing address and telephone number of the client.

LR83.5 Bar Admission

(a) General Qualifications. It shall be required for admission to practice in this court that an applicant be currently admitted to practice in the highest court of a state, territory, or the District of Columbia, and that the applicant appear to the court to be of good moral and professional character.

(b) Application. Each applicant shall file with the clerk (1) an executed copy of the application approved by the court and furnished by the clerk containing (i) the applicant's personal statement and (ii) the statement of two sponsors (who must be members of the bar of this court and must personally know, but not be related to the applicant) endorsing the correctness of the applicant's statement, stating that the applicant possesses all the qualifications required for admission and affirming that the applicant is of good moral and professional character and (2) if admitted in a state other than Tennessee, the applicant shall also attach a certificate from the presiding judge, clerk, or other duly authorized official of the proper court evidencing the applicant's admission to practice there and current good standing. Each applicant shall pay an application fee to the clerk, which is NOT refundable.

(c) Processing of Applications. All applications for admission to practice in this court shall be transmitted by the clerk to a Standing Committee on Admissions, which review the qualifications of applicants and report to the court. Applicants so certified may be admitted on motion of a member of the federal bar in open court or in chambers. The clerk will provide a successful applicant with a certificate of admission.

(d) Reciprocity With Other Districts. Attorneys who are admitted to and entitled to practice in other district courts of the United States shall be permitted to practice specially in this district provided it is certified by the presiding judge or clerk of the proper court that they are members in good standing of the bar of the United States District Court of their residence and a copy of the certificate is attached to the first pleading filed.

(e) Submission of Certificate of Good Standing. If a copy of the Certificate of Good Standing is not submitted with the first pleading, it **MUST** be submitted with the Motion to Appear ***pro hac vice***.

(f) Oath. An attorney admitted to practice shall take and sign an oath or affirmation as prescribed by Rule 5 of the Supreme Court of the United States.

(g) Effect. This admission shall entitle an attorney to practice in this court while and so long as he or she remains entitled to practice in the court of the state, territory or District of Columbia identified on the attorney's application for admission.

(h) Special Admission for Certain Attorneys. Attorneys who are members in good standing of the bar of the highest court of a state or any other district court, and are employed by the United States Government in a professional capacity, may appear in particular cases without an application for admission. Attorneys for whom application is pending may appear on a Motion to Appear *pro hac vice* provided an affidavit proving pending application is attached.

(i) Hearings. At the discretion of the court, the court may order an appropriate hearing regarding any applicant for admission or reinstatement. Regarding applications for initial admission, the court will first submit the application to a committee composed of members of the Tennessee bar, not necessarily from a local bar association, and obtain their recommendation concerning the applicant. The court may schedule a hearing following the committee's recommendation. At the discretion of the court, the court may submit applications for reinstatement to a committee composed of members of the Tennessee bar and obtain their recommendation concerning the applicant.

Admission will be based (to the extent applicable) upon standards contained in the Rules of Professional Conduct and the Rules of the Supreme Court of Tennessee. However, this court will *not* be bound by any decision of the Tennessee courts, the Board of Professional Responsibility, or the committee, regarding an applicant for admission or reinstatement before this court.

(j) Fee for *Pro Hac Vice* Admission. Attorneys desiring to appear *pro hac vice* shall pay a fee of $60.00 upon tendering of any such motion or upon tendering a certificate of good standing pursuant to LR 83.5(d), except that attorneys who have an application for admission pending at the time of tendering such motion or certificate are exempt from paying the fee.

LR83.6 Rules of Professional Conduct

The Rules of Professional Conduct adopted by the Supreme Court of Tennessee are hereby adopted as rules of professional conduct insofar as they relate to matters within the jurisdiction of this court.

LR83.7 Disbarment

(a) Conduct Subject to Discipline. The court may impose discipline on any member of its bar who has violated the Rules of Professional Conduct as adopted by the Supreme Court of Tennessee, or has engaged in unethical conduct tending to bring the court or the bar into disrepute. The court may also discipline any member who has been suspended or disbarred from the practice of law by the state in which he or she is a member, or by any court of record. Discipline which may be imposed includes disbarment, suspension, reprimand, or such other further disciplinary action as the court may deem appropriate and just. Nothing in this rule shall be construed as limiting in any way the exercise by the court of its inherent contempt power or its authority to impose other sanctions provided under federal law and the Federal Rules of Civil Procedure.

(b) Initiation of Disciplinary Proceedings. Formal disciplinary proceedings shall be initiated by the issuance of an order to show cause signed by the Chief Judge. An order to show cause may be issued by the Chief Judge on his or her own initiative or upon a complaint filed by any counsel of record or party to an action in this court. When such order is issued on the court's initiative, no separate complaint need be filed. All complaints relating to disciplinary matters under this rule shall be filed under seal with the clerk. All records pertaining to attorney disciplinary proceedings, except with respect to reinstatement proceedings, shall be confidential and kept under seal in the Clerk's Office unless otherwise ordered by the court.

(1) All complaints of attorney misconduct shall include:
- (i) The name, address, and telephone number of the complainant;
- (ii) The specific facts that require discipline, including the date, place and nature of the alleged misconduct, and the names of all persons and witnesses involved;
- (iii) Copies of all available documents or other evidence that support the factual allegations, including a copy of any rule or order of the court that is alleged to have been violated; and
- (iv) At the end of the complaint, a statement signed by the complainant under penalty of perjury that the complainant has read the complaint and the factual allegations contained therein are correct to the best of the complainant's knowledge.

(c) Initial Action on the Complaint. Upon filing, the complaint shall be sent to the Chief Judge for initial review.

(1) If the Chief Judge determines that the complaint on its face or after investigation is without merit or does not warrant action by the court, the complaint shall be dismissed by order of the Chief Judge.

(2) If following review it is determined that reasonable grounds exist for further investigation, the Chief Judge may order such investigation or may issue an order to show cause if the complaint appears to be meritorious. A copy of the order to show cause, the complaint, and accompanying documents shall be mailed to the member who is the subject of the complaint. The member shall also receive in the same mailing a copy of this rule and a

written statement that the member shall have twenty days from the date of entry of the order to show cause in which to respond.

(3) Alternatively, the Chief Judge may refer the matter to a state disciplinary board for such action as it determines is appropriate.

(d) Response. A member against whom an order to show cause is issued shall have twenty days from the date of the entry of the order in which to file a response. The response shall be filed, under seal, with the clerk, and shall contain the following:

(1) The name, address and telephone number of the respondent.
(2) A specific admission or denial of each of the factual allegations contained in the complaint and order to show cause and, in addition, a specific statement of any facts on which respondent relies, including all other material dates, places, persons and conduct relevant to the allegations of the order.
(3) All documents or other supporting evidence not previously filed with the complaint or order that are relevant to the charges of alleged misconduct.
(4) A specific request for a hearing or a statement specifically declining a hearing.
(5) A statement signed by the respondent under the penalty of perjury indicating that the respondent has read the response and that, to the best of respondent's knowledge, the facts alleged therein are correct.

(e) Summary Dismissal. If the response discloses that the complaint is without merit, it may be dismissed by the Chief Judge.

(f) Conformity with State Discipline. When the respondent has been disbarred or suspended from the practice of law by a state in which the member practices, and the respondent admits the action complained of, or does not respond to the order to show cause, the Chief Judge may enter a final order of the court imposing similar discipline.

(g) Judicial Officer. Upon filing of the response, the Chief Judge may appoint a judge or other judicial officer from within the Eastern District of Tennessee to investigate the allegations of the complaint and the response. The judicial officer shall review all sealed documents related to the disciplinary charges, conduct hearings if necessary, and issue a written recommendation.

(h) Hearings on Disciplinary Charges. A disciplinary hearing shall be held only when the member under investigation has requested such a hearing in a timely response and the judge or the judicial officer has determined that such a hearing is necessary for the proper disposition of the charges.

(1) **Hearing Procedures.** When it has been determined that a hearing is necessary, the judicial officer shall provide the member with written notice of the hearing a minimum of twenty days before its scheduled date. The notice shall contain the date and location of the hearing and a statement that the member is entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine adverse witnesses.

(2) **Conduct of the Hearing.** The hearing shall be conducted by the judicial officer, who shall have the authority to resolve all disputes on matters of procedure and evidence which arise during the course of the hearing. All witnesses shall testify under penalty of perjury. Such hearings, at the discretion of the judicial officer, shall be confidential and shall be recorded. The record of the hearing shall be kept on file in the clerk's office, under seal.

(3) **Rights of the Complainant and the Respondent.** During the hearing, the respondent shall be entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine any adverse witnesses. The judicial officer may permit the complainant to participate in the proceedings through counsel.

(4) **Burden of Proof.** The respondent's violation of the Rules of Professional Conduct or rule or orders of the court shall be proven by clear and convincing evidence. A certified copy of a final order of disbarment or judgment of conviction for a criminal offense, entered in any state or federal court, shall be considered clear and convincing evidence.

(5) **Failure to Appear.** The failure of the respondent to appear at the hearing shall itself be grounds for discipline under Subsection (a) of this rule.

(i) Recommendation. The judicial officer shall prepare a written recommendation which shall include a proposed disposition of the disciplinary charges.

(1) **Filing of the Recommendation.** The recommendation shall be filed, under seal, in the Clerk's Office and copies distributed to the court and the respondent.

(2) **Exceptions to the Recommendation.** The respondent shall have ten days from the date of service of the recommendation in which to file with the clerk a written response to the recommendation. The response shall not exceed twenty-five typewritten pages and shall state concisely any inaccuracies, errors or omissions which warrant a disposition other than that recommended.

(j) Final Action on the Recommendation. Within thirty days of the filing of any exceptions to the recommendation, the court shall enter a final order of disposition. Notice of the final order shall be sent to the respondent and the complainant.

(k) Reinstatement. Reinstatement shall be had only upon a petition by the disciplined member. A former member who has been suspended or disbarred from the practice of law by this court because of suspension or disbarment in another court of record may, upon reinstatement to the other court, file a petition for reinstatement to this court. Each petitioner shall pay an application fee to the clerk which is not refundable. The petition shall be filed with the clerk and shall contain a concise statement of the circumstances of the disciplinary proceedings, the discipline imposed, and the grounds that justify reinstatement. The petition shall be signed by the petitioner under penalty of perjury stating that he or she has read the petition and that the factual allegations contained therein are correct to the best of the petitioner's knowledge. The petitioner has the burden of proving by clear and convincing evidence that he or she has the requisite good moral character, ethical standards, professional competence, and learning in the law necessary to serve as an officer of the court and to be readmitted to the practice of law.

(1) A petitioner who has been suspended for a definite term may be automatically reinstated at the end of the period of suspension upon filing the petition for reinstatement

accompanied by an affidavit showing compliance with the provisions of the order of suspension.

(2) Reinstatement of disbarred or indefinitely suspended lawyers shall not be automatic. Reinstatement of these disciplined members shall be had only upon a petition for good cause shown. Upon the filing of such a petition, the court shall review it to determine whether there is clear and convincing evidence that the petitioner meets the qualifications for reinstatement. The court in its discretion may order such investigation as it deems necessary and may order that a public hearing be conducted regarding any petition.

(3) If a petition is denied after an investigation or hearing, the court may assess the costs of the proceedings against the petitioner.

(4) No petitions for reinstatement under this rule shall be filed within one year following an adverse determination upon a prior petition filed by the same petitioner.

LR83.9 Sentencing Proceedings

(a) Scheduling. Sentencing proceedings shall be scheduled by the district judge no earlier than sixty-five (65) days following entry of a guilty plea or a verdict of guilty.

(b) Disclosure of Report. Not less than thirty-five (35) days prior to the date set for sentencing, the probation officer shall disclose the presentence investigation report to the defendant and to counsel for the defendant and the government. Disclosure to defense counsel shall constitute disclosure to the defendant.

(c) Objections to Report. Within fourteen (14) days after receiving the presentence report, counsel shall communicate to the probation officer any objections they may have as to any material information, sentencing classification, sentencing guideline ranges, and policy statements contained in or omitted from the report. Such communication must be in writing and shall be entitled "Objections of (Defendant) (Government) to Presentence Report." The party filing such a statement with the probation officer shall provide a copy to all other parties. Each objection to a factual determination shall be supported by an affidavit in support thereof.

(d) Revisions. After receiving counsel's objections, the probation officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. The probation officer may require counsel for both parties to meet with the officer to discuss unresolved factual and legal issues.

(e) Summary of Objections. Not later than seven (7) days prior to the date of the sentencing hearing, the probation officer shall submit the presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the officer's comments thereon. The probation officer shall certify that the contents of the report, including any revisions thereof, have been disclosed to the defendant and the government, that the content of the addendum has been communicated to counsel, and that the addendum fairly states any remaining objections.

(f) New Objections; Resolving Disputes. Except with regard to any objections made under paragraph (c) that have not been resolved, the report of presentence investigation may be accepted by the court as accurate. In resolving disputed issues of fact, the court may consider any reliable information presented by the probation officer, the defendant, or the government.

(g) Modifying Deadlines. The times set forth in this rule may be modified by the court for good cause shown, except that the fourteen (14) day period set forth in Subsection 83.9(c) may be diminished only with the consent of the defendant and the government.

(h) Limits of Disclosure. Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under Rule 32 of the Federal Rules of Criminal Procedure.

(i) When Disclosure is Effected. The presentence report shall be deemed to have been disclosed (1) when a copy of the report is physically delivered, (2) one day after the report's availability for

inspection is orally communicated, or (3) three (3) days after a copy of the report or notice of its availability is mailed.

(j) Copies of Reports. The United States Probation Office shall provide the defendant and the defendant's counsel with one (1) copy of the presentence report except for any information that may remain confidential under Rule 32(c) (3) of the Federal Rules of Criminal Procedure. If any portion of the report provided would, in the opinion of the United States Probation Office, pose a danger to persons housed in a local detention facility, the United States Probation Office shall so advise the district judge before releasing the presentence report.

(k) Motions for Departure from Guidelines. The government shall file all motions for a departure under section 5K1.1 of the UNITED STATES SENTENCING GUIDELINES or for a sentence below a statutory mandatory minimum at least five working days before the sentencing hearing. Defendants seeking a downward departure must also in writing notify the court and the government of any request for a downward departure, and the grounds therefor, at least five working days before a sentencing hearing. Failure to timely comply with this rule may result in a denial of a sentence reduction.

LR83.10 Supervised Release or Probation

When terms of supervised release or probation are imposed by this court in any criminal case, the general conditions of such probation or supervised release in each case shall be as follows:

(1) You shall not commit another federal, state, or local crime during the term of supervision;

(2) You shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer;

(3) You shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five (5) days of each month;

(4) You shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

(5) You shall support your dependents and meet other family responsibilities;

(6) You shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

(7) You shall notify the probation officer within seventy-two (72) hours of any change in residence or employment;

(8) You shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

(9) You shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the court;

(10) You shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

(11) You shall permit a probation officer to visit at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

(12) You shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;

(13) You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

(14) As directed by the probation officer, you shall notify third parties of risks that may be occasioned by your criminal record or personal history of characteristics and shall permit the probation officer to make such notification and to confirm your compliance with such notification requirement.

LR83.11 Real Property Bonds in Criminal Cases

Pursuant to 18 U.S.C. §§3142(c)(1)(B)(xi) and Rule 46(d) of the Federal Rules of Criminal Procedure, the following procedures shall govern the making of bonds by real property in this district:

1. The defendant must present to the judicial officer a legally sufficient deed of trust for the real property in question which has been duly executed by all owners of the property and which has been properly recorded with the register of deeds in the county where the property is located.

2. The clerk or the clerk's deputy shall be named as the trustee in the deed of trust and the United States of America shall be named as beneficiary of the trust.

3. The deed of trust shall contain, *inter alia*, a recitation of the amount of money bail which it secures and a statement in boldface type as follows: "THIS INSTRUMENT IS EXECUTED FOR THE PURPOSES OF SECURING AND MAKING CERTAIN THE PAYMENT OF SAID BOND AND ANY AND ALL RENEWALS OR INCREASES THEREOF."

4. The deed of trust will not be released automatically upon any exoneration of the obligors. The clerk is authorized to execute a release on behalf of the court after proper application to him is made and he is satisfied that the obligor(s) should be released from further obligation. Application shall be made by way of a proposed agreed order or written stipulation signed by defendant's attorney, or defendant if *pro se*, and the cognizant assistant United States Attorney.

5. Every surety attempting to make a property bond shall justify by affidavit completed on the reverse side of the appearance bond form (AO98)[2] and setting forth in that affidavit the following:

(a) A brief description of the real property which is described in the deed of trust (need not be the complete legal description);

(b) Who the owner(s) of the property is(are);

(c) All encumbrances or debts, if any, against that property whether of record or not which are not set forth in the aforementioned deed of trust or stating that there are none;

(d) The number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged or stating that there are none if there are none;

(e) A statement of the surety's opinion of the present market value of the real property and a statement of the surety's net worth (this may be stated in the form: "at least $____");

(f) A statement as follows: "This instrument and the associated deed of trust are executed for the purpose of securing the bond set forth on the first page of this form."

6. A judicial officer or the clerk may take the acknowledgements on the front and back of the appearance bond but the "approved" blank shall only be signed by a judge or magistrate judge when the bond is, in fact, approved.

7. The aforementioned appearance bond form (AO98) shall be signed on the front page by the defendant and, in addition, by any person(s) signing as sureties. Their addresses shall be printed legibly or typed. It shall be completed on the reverse page as indicated in paragraph 5 above.

8. The surety shall also present the judicial officer with sufficient written evidence of the present fair market value of the real property, *e.g.*, by a statement from the county's tax assessor

[2] Or by suitable attachment thereto.

regarding the value of the property for tax purposes or an appraisal from a competent, independent appraiser.

9. In addition to a recorded deed of trust in the form stated above, an executed appearance bond (AO98) in the form stated above and written evidence of the value of the property, the judicial officer shall also be presented with a title letter from a licensed attorney setting forth the results of that attorney's examination of the record title.

10. No bond shall be approved unless the surety thereon appears to be qualified. The judicial officer may choose to waive one or more of the requirements of this provision in appropriate cases (*e.g.*, small property bonds).

LR83.12 Release of Juror Information

Names and personal information concerning petit and grand jurors shall not be disclosed to attorneys, parties, the public or the media, except as provided herein.

Names and personal information concerning persons who have been entered in the jury wheel shall not be disclosed, except upon order of the court.

Names and personal information concerning prospective and sitting petit jurors shall not be disclosed to the public or media outside open court, except upon order of the court. A request for disclosure of petit juror names and personal information to the media or public must be made to the presiding judge.

The Clerk may provide names and personal information concerning prospective petit jurors to the attorneys (or a party if proceeding *pro se*) in a case set for trial unless otherwise directed by the court. The names and information will be provided in written form only (hereafter "the jury list"). The attorneys (or party) may not share the jury list or information therein except as necessary for purposes of jury selection. Following jury selection, the attorneys (or party) provided the jury list must return to the clerk the jury list and any copies made from the jury list provided to them and/or destroy them.

The court may order juror names and personal information to be kept confidential where the interests of justice so require.